

Union of India and Others

Vs

The Tata Iron & Steel Co. Ltd.

Civil Appeal No. 1527 of 1974

(CJI A. N. RAY, H. R. Khanna, P. K. Goswami)

31.01.1975

JUDGMENT

GOSWAMI, J. –

1. This appeal is special leave from the judgment of the Delhi High Court in a writ application there under Article 226 of the Constitution. The respondent manufacturers amongst various other items hot rolled finished steel products in rectangular cross-section of thickness varying between 1.7 mm and 6.55 mm and width varying between 16.2 mm and 311.2 mm and rolled in coils which it supplies to the Indian Tube Company Limited at Jamshedpur for making tubes and also to others. This article is subjected to Central Excise Duty under the Central Excise and Salt Act, 1944 (hereinafter called the Act).

The dispute between the respondent and the appellants is that while the former describes the said manufactured product as strip the appellants classify it as skelp. This difference in classifying the product differently results in fiscal misfortune to the respondent since skelp is subjected to a higher Central Excise Duty than strip.

2. It may be stated that during the period from April 24, 1962 to February 28, 1964, the respondent described its product a skelp and it was subjected then to a lower rate of duty. From February 29, 1964, the respondent claimed that the aforesaid product be classified as strip since there had been a levy of higher duty for skelp. The Assistant Collector, Central Excise, Jamshedpur, who is the primary taxing authority, the Collector of Central Excise, Patna, in appeal, and the Central Government in revision rejected the contention of the respondent by successive orders, each authority upon its own test of the definition of the product as skelp. That led to the successful writ application of the respondent in the High Court resulting in this appeal.

3. In the forefront of his argument the learned Additional Solicitor General for the appellants relying upon two decisions of this Court, namely, Collector of Customs, Madras v. K. Ganga Setty ((1963) 2 SCR 277 : AIR 1963 SC 1319 : (1963) 2 SCJ 235) and V. V. Iyer of Bombay v. Jasjit Singh, collector of Customs ((1973) 1 SCC 148), submitted that "it is primarily for the taxing authorities to determine the head or entry under which any particular commodity fell; but that if in doing so, these authorities adopted a construction which no reasonable person could adopt i.e., if the construction was perverse then it was a case in which the Court was competent to interfere. In other words, if there were two constructions which an entry could reasonably bear, and one of them which was in favor of Revenue was adopted, the Court has no jurisdiction to interfere merely because the other interpretation favourable to the subject appeals to the Court as the better one to adopt. On the other hand with equal emphasis Mr. Palkhivala for the respondent submitted that an assessment

without the application of an identifiable test is nothing but perverse and arbitrary. He submits that in the present case there was no identifiable test before the taxing authorities by which the product of the respondent could be held to be skelp and not strip subjecting the respondent to a heavier duty. According to the learned Counsel there is no difference between skelp and strip, the two items being interchangeable.

4. It may be noted for our purpose that under Section 3 of the Act, Central Excise Duties are leviable on all excisable goods which are produced or manufactured in India at the rates set out in the First Schedule. Item No. 26AA in that Schedule relates to iron and steel products and mentions in sub-item (iii) therein flats, skelp and strips showing the rate of duty in the third column. Under Rule 8 of the Central Excise Rules, 1944, made under Section 37 of the Act, the Central Government may from time to time by notification in the official gazette exempt, subject to such conditions as may be specified in the notification, any excisable goods from whole or any part of the duty leviable on such goods. In exercise of the power under this rule the Central Government has made such exemption in the rates of duty as have made it higher on skelp than on strip.

5. Before proceed further we may notice how the various Excise authorities dealt with the matter at different stages. The first order is that of the Assistant Collector of Central Excise, Jamshedpur, which was on June 17, 1964. According to him Skelp is the name used in reference to a plate of wrought iron or steel used for making pipe or tubing by rolling the skelp into shape and lap welding or rivetting edges together and strip is a term used to describe a flat rolled product of smaller cross-section than sheet or bar.

He accordingly adopted the definition given in Marymen's Dictionary of Metallurgy. The order of the Collector of Central Excise in appeal made on October 24/29, 1964, shows that the authority noted the definition of strip as follows :

Hot or cold rolled finished steep product in rectangular cross-section of thickness below 5 mm and of width below 500 mm and supplied in straight length.

This definition is substantially in conformity with the one given by the Indian Standards Institution (ISI). The appellant authority held that since the products have not satisfied the above specifications, they have been correctly classified as 'skelp' by the Assistant Collector . . . .

Then came the order in revision of the Central Government of August 18, 1967. Inter alia it was held that the product does have bevel edges peculiar to skelp and not found in strips. Under the circumstances, there is no doubt whatever that the product in question is correctly classified as skelp.

6. From the above three orders it is clear that the authorities were not at all certain about the uniform definition of 'skelp' distinguishing it from 'strip'. Extensive arguments were advanced at the Bar with regard to the definition of these two words. He may, therefore, look at the various definitions to which our attention has been drawn. Since the appellants largely relied upon the definitions given by the Indian Standards Institution, "an except body", we will first note these definitions. The ISI's definitions of strip and skelp as given in IS 1956-1962 (Amended upto July, 1968) are as follows :

Skelp - Hot rolled narrow strip with rolled (square, slightly round or bevelled) edge.

Strip - A hot or cold rolled flat product, rolled in rectangular cross-section of

thickness 10 mm. and below and supplied with mill, trimmed or sheared edges.

(a) Narrow strip - Strip (other than hoop) or width below 600 mm and supplied in straight length or in coil form.

(b) Wide strip - Strip of width 600 mm and above and supplied in coil form only.

Upto 1965 the ISI gave no description of strip. It had defined skelp in 1962 as follows :

Hot rolled strip with square or slightly bevelled edges, used for making welded tubes.

In 1968 the ISI's definition of skelp stands as follows :

Hot rolled narrow strip with rolled (square, slightly round or bevelled) edge.

Strip was defined by the ISI for the first time in 1965 as follows :

Coiled Strip - A hot or cold rolled flat product, rolled in rectangular cross-section and supplied in coil form.

Strip - A hot or cold rolled flat product, rolled in rectangular cross-section thickness below 5 mm and of width below 600 mm and supplied in straight lengths.

The ISI's definition of strip given in 1968 is as follows :

A hot or cold rolled flat product, rolled in rectangular cross-section of thickness 10 mm and below and supplied with mill, trimmed or sheared edges.

(a) Narrow strip - Strip (other than hoop) of width below 600 mm and supplied in straight length or in coil form.

(b) Wide strip - Strip of width 600 mm and above and supplied in coil form only.

7. Annexure 'J' submitted by the respondent along with its rejoinder affidavit in the High Court at page 101 of the record, gives various definitions of skelp taken from various dictionaries and treatises such as Horner, J.G. Dictionary of Terms, page 323, year 1952; Brandt, D.J.C. Manufacture of Iron & Steel, pages 318 and 319, year 1953; Henderson, J. G. Metallurgical Dictionary, page 292, year 1953; Backort, A.O.L.A.B.C. of Iron & Steel, page 1912, year 1925, 5th edition; Chamber's Technical Dictionary, year 1967. Similarly definition of strip is also given from these dictionaries and books. It is also pointed out that there is no category of skelp mentioned in Brussels Nomenclature. British Standards 2094, Part 4 : 1954, defines skelp as follows :

Hot rolled strip with square or slightly bevelled edges used for making welded tubes.

Chamber's Technical Dictionary Revised Edition (Reprinted 1954) defines skelp as follows :

Skelp - (P. 775) Mild steel strip from which tubes are made by drawing through a bell as welding temperature, to produce lap welded or butt welded tubes.

8. We may not add to the list but are satisfied that there are a large number of definitions out of

which one can be picked up to satisfy the definition of skelp according to some authority and another definition to fit in with the concept of strip according to another authority. Since the duties on strip and skelp are not the same, it is absolutely necessary in the mind of either of the taxing authority or of the tax payer with regard to the tax liability qua skelp as opposed to strip. Since, however, there is no statutory definition of this controversial item different tests have naturally been resorted to by the different authorities and the same variation is discernible even in the affidavits of the appellants submitted before the High Court.

9. The short question, therefore, that arises for consideration is whether in the above background the High Court was right in interference with the orders under Article 226 of the Constitution. It is not for the High Court nor for this Court to come to a conclusion on facts as to whether the product can truly come under the description of Skelp. That undoubtedly would require some evidence be taken at the level of the taxing authority provided, however, there is an identifiable, uniform and determine test by which skelp can be properly distinguished from strip. In the mass of documents filed before us and the extensive arguments addressed at the Bar with regard to the definitions called from various dictionaries, hand-books and authorities, we are not at all surprised that the three authorities came to the same conclusion by depending upon their own chosen tests. A particular type of strip may according to certain definition skelp and according to others not skelp. This, however, cannot be permitted in a fiscal legislation which by all standards should adopt a clear definition of an excisable item which is incapable of giving rise to a confounding controversy as in this case unless the matter is beyond doubt in view of the popular meaning or meaning ascribed to the term in commercial parlance. In absence of any clear criterion to determine what is skelp and not strip, no useful purpose would be served by even remanding the matter to the Excise authorities for a decision after taking necessary evidence. It is only when a taxing law provides for a clear and unequivocal test for determination as to whether a particular product would fall under strip or skelp it may be possible for the authorities to address itself to the evidence submitted by the parties in order to come to a decision on the basis of the test. This is, however, not possible in this case in view of the fact that there is no identifiable standard. The best way is to define the product for the purpose of excise duty in appropriate terms demarcating clearly the distinction between the two terms.

10. The absence of any identifiable standard would, therefore, naturally give rise to the scope for arbitrary assessment at the hands of different authorities. Whether this has happened in this case, as complained by the respondent citing the instance of the Hindustan Steel Company, Rourkela, it is not necessary for us to pursue in this appeal. We are, therefore, unable to hold that the High Court has gone wrong in granting the reliefs prayed for.

11. The appellants strenuously emphasised upon the test relied upon in the revisional order as to skelp having bevelled edges which, according to them, is peculiar to skelp and not to strip. But this does not bear scrutiny a on the counter-affidavit of the Union of India in the High Court at page 57 of this record it shows that as regards tested hot rolled strips, the edges are never looked into, they can be bevelled, square or have mill edge

This is an admission of the appellants that strips may also have bevelled edges.

12. The two decisions relied upon by the appellants do not come to their aid in this case since there is no identifiable standard or test to determine clearly which product can be skelp and not strip. In Ganga Setty's case (supra) the controversy arose with regard to whether "feed oats" fell within item No. 42 (fodder) or within item No. 32 (grain) of a particular circular. Dealing with the matter this

Court observed as follows :

Any particular species of grain cannot be excluded merely because it is capable of being used as cattle or horse feed.

The decision of the Customs authorities, therefore, this Court held, could not be characterised as perverse or mala fide calling for interference. Similarly following Ganga Setty's case in Jasjit Singh's case (supra) the conclusion and findings of the Customs authorities were accepted as reasonable. In both the above cases there were definite tests by which the particular article could be held to fall under one item and not under the other and the construction of the authorities with regard to the scope of the particular entries was, therefore, held to be reasonable and not calling for interference by the Court. The question that arises in the instant case is of a completely different nature as pointed out above, there being no identifiable test reasonably capable of distinguishing skelp from trip.

13. In the result the appeal fails and is dismissed with costs.

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