Tata Iron and Steel Co. Ltd

Vs

Union of India and Others

Civil Appeal No. 783(NM) of 1987

(CJI R. S. Pathak, M. N. Venkatachaliah JJ)

06.05.1988

JUDGMENT

KANIA, J. –

1. This is an appeal by the Tata Iron and Steel Co. Ltd. (referred to hereinafter as "the Tisco') against the judgment of a Division Bench of the Patna High Court in writ petition filed by the Tisco. The writ petition was filed by the Tisco for quashing an order passed by the Collector, Central Excise, Patna on September 24, 1982. The Division Bench of the Patna High Court in the impugned judgment only granted partial relief to the Tisco and the appeal in respect of the relief refused.

2. The relevant facts are as follows :

> The appellant manufacturers inter alia wheels, tyres and axles of railways. The buyers of these products are the Indian Railways. Apart from this, the appellant also makes and supplies to the Indian Railways wheels and axles as composite units. These are forged products. Before the said goods are supplied to the railways the said goods after being forged are machined and polished by the appellant and as a result of this machining and polishing the excess layer of steel which is commonly referred as "excess skin" is removed; and one of the disputes is as to whether for the purpose of item 26-AA(i-a) of the Central Excise Tariff set out in the First Schedule to the Central Excises and Salt Act, 1944 (referred to hereinafter as "the Central Excises Act") the weight of the steel should be calculated as at the time when the forging was complete or after machining and polishing to remove the excess skin of steel. Certain other incidental work on the said goods might have been done by the appellant, but that is not material for our purposes. The stand of the appellant was that these items were dutiable in their hands only once and under tariff item 26-AA(i-a). The contention of the revenue was that in the hands of the appellant they were liable to duties at two stages, namely, under tariff item 26-AA(i-a) when they were forged and under tariff item 68 of the Excise Tariff after they were machined and polished for being supplied to the railways. Right from 1962, the appellant was following classified list showing these goods as liable to excise duty only under tariff item 26-AA(i-a) and this classification list submitted by the appellant was accepted and approved by the excise authorities. In 1981, the Assistant Collector, Central Excise, Jamshedpur who is one of the respondents before us by a show-cause notice dated May 16, 1981 called upon the appellant to show cause why it should not be proceeded against for contravention of Rules 173-B, 9(i) read with Rule 173(G)(i) and Rule 173(i)(a). The ground was that the goods supplied by the appellant to the

railways were not forged items as such, but the said goods after they had undergone machining and polishing after being forged and had been turned into distinct commercial commodities by the process of machining and polishing which amounted to manufacture and hence the goods were also liable to the payment of excise duty as set out in item 68. The notice also called upon the appellant to show cause as to why duty on the forged goods under tariff item 26-AA(i-a) should not be payable on the footing of the weight of the goods as forged and before the removal of the excess skin by the machining. The appellant by their letter dated May 27, 1982 replied to the said notice taking up the stand that the process of forging of the goods could be said to be completed only after machining and polishing and that this was required to be done in order to bring the goods in line with the specification of the Indian Railways. The said letter addressed to the Collector inter alia pointed out that all the wheels, tyres and axles had to be rolled and machined by the appellant to make them conform to the Indian Railways standard denominations. However, all wheels, tyres and axles supplied by the appellant were further precision machined and fine polished at the railway workshop, that this further machining at the railway workshop is a must before the said articles could be put to use by the railways and hence the machining by the appellant did not amount to manufacture. A copy of the letter is not on record, but there is a clear reference to it in the order passed by the Collector imposing excise duties as aforesaid. The Collector rejected the stand of the appellant and held that appellant was liable to pay differential duty under item 26-AA(i-a) on the difference between weight of the said goods when forged and the weight after machining to remove the excess skin as well as the duty under tariff item 68 as set out earlier. The Collector further held that the appellant was liable to penalty of Rs. 1 lakh under Rule 173-Q of the Central Excise Rules, 1944 for suppression of facts or giving misleading particulars. The Collector took the view that the appellant was guilty of mis-statement or suppression of facts and hence the period of limitation for making the demand was 5 years prior to the service of the show cause notice. The Division Bench of the Patna High Court accepted the conclusions of the Collector save and except that they took the view that there was no suppression or mis-statement of facts on the part of the appellant and hence the period of limitation would be only six months prior to the service of the show cause notice.

3. Before proceeding further, we would like to set out the relevant items from the Central Excise Tariff. The relevant portion of item 26-AA of the Central Excise Tariff, at the relevant time read as follows :

26-AA. Iron or steel products, the following, namely, -

(i-a) Bars, rods, coils, wires, joists, girders, angles other than slotted angles, channels other than slotted channel, tees, beams, zeds, trough, piling, and all other rolled, forged or extruded shapes and sections, not otherwise specified.

4. Item 68 of the Excise Tariff is the residuary item and it ran as follows :

68. All other goods, not elsewhere specified, manufactured in a factory but excluding :

(a) alcohol, all sorts, including alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics; and

(c) dutiable goods as defined in Section 2(c) of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955).

5. There is an explanation to item 68, but the same is not relevant for our purpose.

6. A perusal of these items makes it clear that forged steel products are liable to duty in terms of tariff item 26-AA. It is also beyond dispute that forged steel goods with which we are concerned would be covered by tariff item 26-AA(i-a) which includes forged or extruded shapes and sections, not otherwise specified. It is common ground that the appellant is liable to pay excise duty on the said goods under tariff item 26-AA(i-a). The dispute in this connection is what is the stage at which the said goods could be said to be forged iron and steel products as contemplated in the said item; whether they could be regarded as such as soon as they are forged or after machining and polishing to remove the excess skin before being supplied to the Indian Railways. The stand of the appellant is that this machining and polishing which is done in its workshop, is not of significant character and extensive precision machining and polishing has to be done by the railways at their workshop before the wheels, tyres and axles supplied by the appellant can be attached to the rolling stock. The machining and polishing done in the workshop of the appellant was only in the nature of shaping by removing the superficial material to bring the forged items up to with the Railways' specifications. A perusal of item 26-AA would show the excise duty on forged goods covered under the said entry, is according to the weight of the goods. It was contended by the appellant that the weight should be measured only after the polishing and machining at the appellant's workshop was completed. It is obvious that as a result of such machining and polishing there would be some loss of weight on account of excess skin removal. It was on the other hand contended on behalf of the revenue, the respondent herein, that the forging of the goods was complete before the machining and polishing was done to remove the excess surface or excess skin. It appears to us that the aforesaid contention of the appellant deserves to be accepted. Even to prepare forged goods for supplying to the railways, it was essential that the goods should comply with the railways' specifications and the excess steel on the surface or the excess skin as it is called, would have to be removed for that purpose. Moreover, as pointed out by learned Single Judge of the Delhi High Court, in Metal Forgings Pvt. Ltd. v. Union of India [(1985) 20 ELT 280 : (1987) 11 ECC 231 (Del)] (at para 12) :

> ...the process of manufacture of forged products consists of cutting of steel, pre-heating of material, heating and beating of steel material till final shaping is achieved. The steel forging process involves open forging process where the quantity is small and drop/close die forging and/or upset forging process under which the product is made with the help of dies. Thereafter, the extra/unwanted material is removed by either trimming or by gas cutting or by skin cutting to achieve the shape and section nearest to the forged steel product required and also the forging to clearances specified in the standards by ISI/or International. It is conceded by the Government that forging would not cease to be forging by processes like removal of superfluous extra skin of cast iron.

7. The learned Judge has further pointed out in the next paragraph of the said judgment that the removal of extra/unwanted surface steel by either trimming or by gas cutting or by skin cutting of the forged products must be regarded as incidental or ancillary to the process of manufacture. This view is also consistent with the definition given to the term "manufacture" contained in sub-section (f) of Section 2 of the Central Excises and Salt Act, 1944. This definition shows that the

manufacture includes any process incidental or ancillary to the completion of a manufactured product. We are, therefore, of the view that in respect of the said goods the weight for the purpose of levy of excise duty under item 26-AA(i-a) should be taken after the machining and polishing is done to remove the excess surface skin and the contention of the appellant in this regards must be accepted.

8. The next question is, whether, as a result of the polishing and machining done by the appellant on the said goods before supplying them to the railways the same were transformed into new commercial commodities, namely, finished axles, wheels, tyres and so on or whether these finished or manufactured goods which could be regarded as distinct commercial products came into existence only after precision machining done at workshops of the Indian Railways to enable the railways to put these goods to use to meet the actual requirements of the railways. It is not the case of the respondent that there were three distinct sets of goods, namely, one the forged steel products, two the manufactured goods supplied by the appellant to the railways and three, the finished goods as turned out from the Indian Railways' workshops for being used by the railways. It must be regarded as common ground that duty under item 26-AA was payable on the forged products and duty under tariff item 68 was payable only at the stage of the completion of the manufacture of the finished goods, namely, axles, wheels, tyres and so on. The certificate issued by A. K. Malhotra, Additional Director, Railways (Stores) clearly states that the goods supplied by the appellant to the Indian Railways and manufactured at its plant at Jamshedpur are manufactured according to specifications and drawings agreed to between the parties. Axles are supplied to the railways in rough machined condition and wheels, tyres and blanks are supplied in "as rolled/as forged" condition. These wheels/tyres, axles and blanks have to be sometimes rough machined partially to remove excess steel or manufacturing defects. These products are subsequently precision machined by the railways at their workshops before being put to use to meet the actual requirements of the railways. There is no challenge to the correctness of this certificate either before the Collector or before the trial court and there is no reason as to why it should not be taken as correct. The certificate clearly shows that axles supplied by the appellant to the railways were in rough machined condition and wheels, tyres and blanks were supplied in rough or forged condition. Sometimes, wheels, tyres, axles and blanks had to be even rough machined partially at the railways workshops to remove excess steel or manufacturing defects. All these products had to be subsequently precision machined by the railways before being put to use. In these state of affairs, it is quite clear that the finished goods, namely, finished wheels, tyres, axles and blanks could be said to have come into existence only after the precision machining and other processing at the railways' workshops was completed and the appellant is not liable to pay any duty on these goods as under item 68 of the said Central Excise Tariff.

9. We may make it clear that what we have said in the foregoing paragraphs is applicable to all the goods with which we are concerned save and except wheels, tyres and axles manufactured by the appellant and supplied as composite units. In respect of these composite units, it is beyond dispute, and it is conceded by the appellant, that it is liable to pay duty on the same under tariff item 26-AA(i-a) as well as under tariff item 68. The only contention in this connection is as regards the question of limitation to which we shall presently come.

10. Regarding the question of limitation, the dispute is whether, assuming that the demand made by the Collector was valid, what is the period to which it could relate, it being common ground that as far as composite units comprising wheels, tyres and axles supplied by the appellant to the Indian Railways are concerned the demand under item 68 of the Central Excise Tariff was justified. The question here is as to whether the demand could extend only to six months prior to the service of the

show cause notice as contended by the appellant or up to a period of five years prior to that notice as contended by the respondent. In this regard, Section 11-A is the relevant provision. The said section has been amended in 1978, but we are not concerned with that amendment. A perusal of sub-section (1) of that section shows that where any duty of excise has not been levied or short-levied or short-paid or erroneously refunded, the Central Excise Officer concerned may, within six months from the relevant date, serve notice on the person chargeable with that duty. This provision would clearly show that the period for which the demand could be made was only six months prior to the service of the notice. Now, in the present case, it has been found by the High Court and, in our opinion, rightly, that there was no suppression or misstatement of facts or fraud by the appellant to which the alleged short levy or non-levy could be attributed. In fact, it is common ground that right from 1962 the appellant was filing classification lists containing the description of the items and showing them as liable to the payment of excise duty only under item 26-AA(i-a) and these lists were accepted and approved by the excise authorities. In these circumstances, we fail to see how it could be said that the appellant was guilty of any suppression or misstatement of facts or collusion or violation of the provisions of Central Excises Act as contemplated under the proviso to Section 11-A of the said Act. In view of this, the period of limitation would clearly be only six months prior to the service of the show cause notice. The demand for excise duty against the appellant on the said composite units under item 68 of the Excise Tariff, to the extent that it exceeds the period of six months prior to the service of the show cause notice must, therefore, be struck down.

11. In our view, the learned judges who delivered the impugned judgment were in error in taking the view which they took on the questions discussed aforesaid, except regarding limitation. The learned judges have placed considerable reliance on the new classification of the Tariff Items in 1985 in considering the true scope of item 26-AA and item 68 as they stood in 1981. In our opinion, this reliance was misplaced.

12. In the result, the appeal is allowed. The appellant is liable to pay duty on the goods referred to in the petition other than the composite units only under item 26-AA(i-a) of the First Schedule to the Central Excises Act and the duty will be based on the weight after the machining carried out in the factory of the appellant to remove the excess skin or excess surface steel. Secondly, in respect of the composite sets, the appellant is liable to pay duty both under items 26-AA(i-a) and 68, but only for a period of six months prior to the service of the show cause notice. Looking to all the facts and circumstances of the case, there will be no order as to costs.

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