

Rathi Alloys and Steel Ltd., Alwar

Vs

Collector, Central Excise, Jaipur

With

Mehta Alloys and Steel Works, Ludhiana and Others

Vs

Collector, Central Excise, Chandigarh

With

Rathi Alloys and Steel Ltd.

Vs

Assistant Collector, Customs and Central Excise Divn., Jaipur

Civil Appeals Nos. 363 of 1988

(K. Jagannatha Shetty, R. M. Sahai JJ)

06.03.1990

JUDGMENT

R. M. SAHAI, J. -

1. Manufacturers of steel ingots, out of iron and steel melting scrap with aid of electric arc furnace, challenged notices issued under Central Excises and Salt Act, 1944 for short levy on clearances of Runners and Risers and claimed that as they, too, were steel ingots or Melting Scrap they were liable to same duty as was payable on ingots, therefore, the notices issued to them were liable to be discharged.

2. Runners and Risers are solidified molten metal in refractory channel leading to casting or ingot mould. The Tribunal (Customs Excise and Gold Control Appellate Tribunal) found that since they are found in narrow channel and they are not of any predetermined size or devised for producing solidified material for any particular use they could not be considered as ingots. They were held to be scrap. And the claim of exemption or concessional rate of duty was not accepted as it could not be extended to scrap.

3. Tariff Item 26 of the Schedule to the Act during relevant period read as under :

"Steel ingot including steel melting scrap".

From March 1969 onwards various notifications were issued exempting or levying duty on

concessional rate on steel ingot manufactured with the aid of electric furnace provided the manufacture was done in the manner provided in the notifications. Since steel melting scrap was not mentioned doubt arose if the exemption under the notification issued from time to time extended to the entire entry of Tariff Item No. 26 or it was confined to steel ingots. The Board clarified it by saying that, "description of the Item No. 26 read as Steel Ingots including Steel Melting Scrap." The notification referred to above, therefore should be read in the context of the Tariff description and not in isolation. Thus, the exemption contemplated in the aforesaid Notification relates not only to Steel ingots but also to Steel melting scrap arising in Electric furnace units. Effect of this was that the Government of India, even, in exercise of its power as quasijudicial authority held in Century Iron and Steel Ltd. In re, ((1982) 10 ELT 761 (GOI)) that Runners and Risers obtained during manufacture of steel ingot was also exempt from the date of notification issued in 1979. Details furnished by the department in pursuance of order passed by this Court further shows that Runners and Risers have not been subjected to levy in some States and even refund has been allowed in some cases.

4. Effort of appellants' learned counsel was to assail order of the Tribunal on test of user. It was urged that Runners and Risers being solidified molten metal in process of manufacture in the channel and the better one being subjected to same use as ingot, namely for rolling, their clearance as ingots was in accordance with law and the notices issued for short levy were liable to be discharged. For the defective one, that is not fit for rolling, it was claimed that it was melted as scrap and since it was produced out of steel melting scrap no manufacturing activity could be said to be involved in it and it did not attract any duty. Learned counsel urged that steel melting scrap attracted duty only when it was produced out of material other than melting scrap for instance, iron ore etc. He submitted that excise duty on Runners and risers could be charged only if they were taken as ingots and not as steel melting scrap. Reliance was placed on clarification issued by Ministry of Finance of January, 1979 that Notifications issued granting exemption to ingots applied to steel melting scrap arising in electric furnace unit. Whereas the learned Solicitor General submitted that it is well settled that the burden to prove exemption lies on the person who claims it. Since exemption under notification was available to ingot only it could be extended to it and it only and to no other item by implication. He submitted that Runners and Risers could not be termed as ingots and since the exemption or concessional rate of duty was available to ingots only it could not be extended to scrap on test of user or any other test.

5. One of the reasons which persuaded appellants claim was that it would appear incongruous that ingot should be exempted from duty whereas its waste was exigible to duty. In fiscal matters one need to go, necessarily, by reason as was, in fact, submitted by learned Solicitor General who was very fair although quite firm. But what cannot be overlooked is the innate injustice and hardship to which appellants have been exposed, primarily, due to action of department and government. If the order of the Tribunal is upheld then it may result in harsh economic difficulty of some as appellants are secondary or small manufacturers who because of Board's clarification cleared the goods as steel ingots without any objection from the department. It may also lead to reopening of matters which were closed long back. What is further significant is that dispute does not survive after 1983.

6. What is apparent is that leviability of duty on Runners and Risers as covered by Tariff item No. 26 was not free from difficulty. The Board, the Government and even the department by and large was clearing these items as scrap entitled to benefit of notifications exempting or levying duty on concessional rate on item covered by Tariff Item No. 26. Even in the State of Punjab it was cleared for some time till dispute arose. Although it would not operate as estoppel but rule of fairness is yet another principle which is well-settled and precludes public bodies, specially the government

departments from reopening such matters which were taken to be settled due to its actions. Further from perusal of notices issued to different petitioners some appear to be wholly beyond six months and others partly. For instance, notice was issued to M/s. D. B. A. Steel Pvt. Ltd., Punjab on 24/12/81 for period 20/1/79 to 4/8/81. Similarly, notice to Pratap Steels Mandi Gobindgarh, Punjab was issued on 17/9/79 for period 15/7/77 to 8/4/79. The period within six months was from 10th March, 1978 only. Therefore, one of the questions that shall arise and which has been kept open by Tribunal is if notices beyond six months were barred by time.

7. In these peculiar facts and circumstances, but not as precedent, we refrain from entering into decision if Runners and Risers were steel ingot or steel melting scrap and leave it open to be decided in appropriate case but in order to do substantial justice between parties we are of opinion that in view of Board's order which was acted upon by the department the notices issued against petitioners should be discharged. But this shall not entitle anyone to claim any refund of any duty paid on Runners and Risers.

8. Civil appeals and special leave petitions are disposed of accordingly. There shall be no order as to costs.

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