

Kishore Metal & Wire Industries

Vs

Collector of Central Excise, Bombay

Civil Appeal No. 372 of 1985

(S. P. Bharucha, S. B. Majmudar JJ)

01.10.1996

ORDER

1. There is an Office Report dated 21-9-1996, that the sole respondent was served on 17-7-1986, but no appearance on his behalf had been filed. Learned counsel applied when the matter was called out for permission to appear on behalf of the respondent. He was told that we would grant permission if somebody from the Central Agency gave an undertaking to court to file the necessary vakalatnama, etc. We have heard learned counsel for the appellants but there is no one yet present from the Central Agency to give the undertaking. We, therefore, decide the matter ex parte.

2. The relevant portion of the exemption notification with which we are concerned reads thus :

Effective rates

"1. Copper in any crude form including ingots, bars, blocks, slabs, billets, shots and pellets, falling under sub-item (1) and wirebars, wire rods and castings of copper alloys falling under sub-item (1a), if made from any of the following materials or a combination thereof, namely :

(i) Old scrap of copper or copper alloys."

3. The real question is what is meant by "old scrap". Learned counsel for the excise authorities argued before the Tribunal that the term "old" must be given due significance and, since the bills of entry filed by the appellants did not indicate that what they had imported was old scrap, the scrap was dutiable. This argument found favour in the majority judgment. At the same time, the majority judgment held that the appellants could not be expected to produce evidence that the scrap which had been purchased from the local market was old scrap because the appellants were not the importers of such scrap. The dissenting member of the Tribunal took the view that the words "old scrap" were not unambiguous.

4. We are inclined to agree with the dissenting view. It is not at all clear what is meant by the term "old scrap". The words seem tautologous. Their benefit should go to the assessee.

5. The appeal is allowed. The judgment and order of the Tribunal under appeal is set aside and it is held that the appellants are entitled to the benefit of the exemption insofar copper scrap imported during the periods October 1979 to June 1980 and June 1980 to February 1981 is concerned and the conditions of exemption notification are otherwise satisfied.

6. No order as to costs.