

Chheda Industries

Vs

Collector of Customs, Madras

Civil Appeals Nos. 1744-45 of 1988

(Sujata V. Manohar, S. C. Sen JJ)

25.03.1999

JUDGMENT

SMT SUJATA V. MANOHAR, J. –

1. The appellants in Civil Appeals Nos. 1744-45 of 1988 are importers of stainless steel circles. The appellants have filed the present appeals against an order of the Customs, Excise and Gold (Control) Appellate Tribunal holding that stainless steel circles imported by the appellants are classifiable under Customs Tariff Entry 73.15(2) instead under Tariff Entry 73.15(1) as contended by the importers. The appellants in Civil Appeals Nos. 10334-36 of 1995 are Union of India. They have challenged a decision of the Madras High Court holding that the stainless steel circles imported by the respondents therein are classifiable under Customs Tariff Entry 73.15(1) and not under Customs Tariff Entry 73.15(2) as contended by the appellants therein. The Madras High Court has followed an earlier decision of the Division Bench of that Court in Venkateshwara Stainless Steel & Wire Industries v. Union of India [(1991) 53 ELT 312 (Mad)] in so holding.

2. All these appeals raise a common question regarding the classification of stainless steel circles imported by the assessee. For the sake of convenience, we are referring to the facts in Civil Appeals Nos. 1744-45 of 1988.

3. In or about October 1980 the appellants imported stainless steel circles. The Customs authorities levied and collected duty on stainless steel circles so imported under Customs Tariff Heading 73.15(2). The standard duty of customs under that heading was 300% which was reduced by Notification dated 15-7-1977 and the effective duty was 220% which was levied and collected. The importers contended that the correct classification of the goods so imported was under Customs Tariff Heading 73.15(1) and the rate of duty was 60% which, by reason of a Notification dated 18-6-1978, was reduced to 35%. The appellant has lost in the departmental proceedings and hence the present appeals.

4. The relevant tariff entry, at the material time, was as follows :

#	Duration	No. & description	standard	UK preferential	when rate of article	areas of duty are protected	Heading	Sub-heading	Rate of duty	Other
							73.15	Alloy Steel and high carbon steel in the forms mentioned in Headings Nos. 73.06/07 to 73.14	(1) Not elsewhere specified. 60%	
								(2) Coils for re-rolling, bars (including bright bars), rods, wire rods, strips, sheets and plates of stainless steel.	300%	##

5. Entry 73.15 sets out that it will cover, inter alia, stainless steel in the forms mentioned in Headings Nos. 73.06/07 to 73.14. These earlier Headings 73.06/07 to 73.14 deal with iron and steel products. The forms of iron and steel items which are mentioned in these entries, inter alia, are puddled bars, pilings, ingots, blocks, lumps, coils for re-rolling, bars and rods, angles, shapes and sections, hoops and strips, sheets and plates and so on. Heading 73.13 deals with sheets and plates of iron or steel, hot-rolled or cold-rolled. It is divided into two parts : (1) Not elsewhere specified and (2) Tinned sheets and plates. Circles are not expressly mentioned in any of these entries. Entry 73.15 which deals, inter alia, with stainless steel, is also divided into two parts : (1) Not elsewhere specified and (2) Coils for rerolling, bars, rods, wire rods, strips, sheets and plates of stainless steel. Sub-heading (2) clearly refers to certain specific forms of stainless steel which are mentioned therein, namely, coils, bars, rods, wire rods, strips, sheets and plates. Forms which are not expressly dealt with in the second sub-heading will fall under the first sub-heading which is in the nature of a residuary sub-heading covering all types and forms of stainless steel material which does not fall under sub-heading (2).

6. It is the contention of the department that sheets which are expressly covered by sub-heading (2) of Heading 73.15 would cover circles. Therefore, circles will not fall in the residuary sub-heading (1) of Heading 73.15. The department relies upon Note 1(n) of the chapter notes of Chapter 73 dealing with iron and steel and articles thereof. Entry 73.15 forms a part of this chapter. Note 1(n) which relates to sheets and plates in an earlier Heading 73.13, is as follows :

"(n) 'sheets and plates' (Heading No. 73.13) :

rolled products [other than coils for re-rolling as defined in paragraph (k) above] of any thickness and, if in rectangles, of a width exceeding 500 millimetres.

Heading No. 73.13 is to be taken to apply, inter alia, to sheets or plates which have been cut to non-rectangular shape, perforated, corrugated, channelled, ribbed, polished or coated, provided that they do not thereby assume the character of articles or of products falling within other headings;"

7. The second part of Note 1(n) states that Heading 73.13 will apply, inter alia, to sheets or plates which have been cut to non-rectangular shapes. The department, therefore, contends that a circle is nothing but a sheet which is cut to a non-rectangular shape. It will, therefore, be covered by the term "sheet". Hence in Heading 73.15 also "sheet" in sub-heading 73.15(2) will cover a circle.

8. Webster's Comprehensive Dictionary defines a "sheet" as : (1) A very thin and broad piece of any substance; that which is or can be spread, as upon a surface, or can be laid in broad folds; anything having a considerable expanse with very little thickness. (2) A large rectangular piece of linen or cotton cloth, used in making up a bed. (3) A piece of paper, especially one of a regular size; hence, a newspaper, or a leaf of a book. (4) A piece of metal or other substance hammered, rolled, fused or cut very thin : a sheet of glass. (5) A broad flat surface; superficial expanse : a sheet of water; a sheet of flame etc. A sheet, therefore, is basically a very thin and broad piece of any substance normally of a regular shape. Hence Note 1(n) expressly includes a sheet cut into a non-rectangular shape. A stainless steel circle has a distinct shape and form of its own quite different from a sheet. In the case of Venkateshwara Stainless Steel & Wire Industries case [(1991) 53 ELT 312 (Mad)], after referring to the Indian Standard Specifications for stainless steel sheets, coils and circles for utensils and hospitalware, the Madras High Court has pointed out that in commercial parlance stainless steel circles are a commodity distinct from stainless steel sheets. Their pricing is also on a

different basis (diameter length). The High Court has also referred to at least two notifications under the Central Excise Tariff where a distinction is made between sheets and circles. The first notification is in respect of partial exemption to plates, sheets, circles, strips and foils produced from old or duty-paid scrap. While the second notification is in respect of aluminium. It grants exemption to aluminium manufactures containing more than 97% of aluminium. The notification refers to plates, sheets, circles, strips and foils. Of course these are notifications under a completely different tariff. We are referring to them only for the purpose of showing that sheets and circles have been considered as two different forms in which a metal can be manufactured or sold.

9. Since forms which are not specifically set out in Tariff Heading 73.15(2) will have to be classified under Heading 73.15(1), circles of stainless steel will have to be classified under Heading 73.15(1). Note 1(n) does not provide much assistance in this connection. In respect of Heading 73.13 which deals with sheets and plates, the note says that sheets or plates which have been cut to non-rectangular shapes will also be classified as sheets or plates. But when stainless steel is in the form of a circle, it assumes a specific form and it cannot be treated merely as a stainless steel sheet which has been cut to a non-rectangular shape. It has a specific form of its own.

10. Tariff Heading 73.15 has been subsequently amended by the Customs Tariff Amendment Act of 1982 by which Tariff Entry 73.15(2) has been amended to include circles, angles, sheets and sections in addition to sheets and plates of stainless steel. The Statement of Objects and Reasons sets out :

"Stainless steel articles not elsewhere specified other than those falling under sub-heading (2) fall under sub-heading (1) of Heading 73.15 The difference in duty under the two sub-headings is so large that attempts have been made by some importers to manipulate the description or form of the articles in such a way as to claim a lower rate of duty as has recently happened in the case of stainless steel sheets imported in the guise of folded angles and circles"

The amendment whereby angles, shapes, sections and circles of stainless steel are added to Tariff Heading 73.15(2) is given retrospective effect from 1-1-1981. Therefore, prior to 1-1-1981, angles, shapes, sections and circles of stainless steel were not covered under sub-heading (2) of Heading 73.15. They have been so included with effect from 1-1-1981. It is a well-established principle of interpretation of taxing statutes that the benefit of any doubt relating to interpretation must go to the taxpayer.

11. The contention of the department that prior to the amendment, sheets included angles, shapes, sections or circles is difficult to accept for reasons we have set out. We are, therefore, inclined to agree with the view taken by the Madras High Court in Venkateshwara Stainless Steel & Wire Industries case [(1991) 53 ELT 312 (Mad)]. The Delhi High Court has, however, in the case of Super Traders v. Union of India [1983 ELT 258 (Del)], taken a contrary view holding that stainless steel circles are nothing but stainless steel sheets and are classifiable under Heading 73.15(2). It has relied upon Chapter Note 1(n) and has held that stainless steel circles are stainless steel sheets cut to non-rectangular shape. In our view, this is not a correct reading of Note 1(n). A circle is a very specific form in which stainless steel is marketed. It cannot be treated as a sheet cut to a non-rectangular shape. Its pricing is also different from that of a sheet. It has a separate form and a commercial identity of its own. It would, therefore, not be covered by the term 'sheet' in Tariff Heading 73.15(2) prior to 1-1-1981.

12. All these appeals deal with Tariff Entry 73.15 as it stood prior to its amendment with effect from 1-1-1981. Therefore, stainless steel circles imported by the importers in all these appeals are classifiable under Tariff Heading 73.15(1) and not under Tariff Heading 73.15(2).

13. Civil Appeals Nos. 1744-45 of 1988 are, therefore, allowed while Civil Appeals Nos. 10334-10336 of 1995 are dismissed. Refund applications by the assesseees will have to be processed in accordance with the ratio of the judgment of this Court in *Mafatlal Industries Ltd. v. Union of India* [(1997) 5 SCC 536 : (1996) 9 Scale 457]. There will, however, be no order as to costs.