

L.M.L. Limited

Vs

Collector of Central Excise, Kanpur

(J.S. Verma, B.N.Kirpal JJ)

21.08.1997

JUDGMENT

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KIRPAL, J.

1. The appellant is engaged in the manufacture and sale of two-wheeler vehicles and it has been granted central excise licence by the respondent for the manufacture of the scooters together with the parts and accessories.
2. For the purpose of manufacturing of scooters and parts and accessories thereof the appellant purchases duty paid steel sheets on which the duty of excise at the rate of Rs. 715 per ton is paid by it under Tariff Heading 7212.50. With effect from 1st March, 1986 the Modvat Credit Scheme was introduced to give credit to the manufacturers in respect of the duty of excise already paid by them and allow them the benefit of set off of such credit of duty already paid against the duty payable by them on the scooters as well as parts and accessories thereof.
3. After working of these sheets for the manufacture of parts of scooters some portion of the sheets remain. Some of these portions are used by the appellant for the manufacture of small parts of the scooters.
4. The dispute which arises in the present case is as to how should these portions be classified. According to the respondent these portions, which the Tribunal has for the sake of convenience described as 'off-cuts', being fit to be used for the manufacture of further articles are nothing but steel sheets and they should have been cleared at the rate of duty at which they were brought in the factory and credit taken, i.e., at the rate of Rs.715/- per ton. The contention of the appellant before the excise authorities was that it is only some portions of off-cuts, depending upon their sizes, which are used for the manufacture of small parts of the scooter. These portions or off-cuts cannot be classified as sheets and their correct classification would be that of waste and scrap. According to the appellant the duty which is payable on waste and scrap of steel under the tariff item 7203.20 is Rs.365/- per ton and it is at this rate that the duty should be claimed from it.
5. The connection of the appellant was neither accepted by the assessing authority, i.e., assistant Collector nor by the Collector, Appeals. A second appeal to the Tribunal met with the same fate hence this appeal.
6. On behalf of the appellant, Sh. Joseph Vellapally, learned senior counsel, has contended that after the sheets have been cut and used for the manufacture of scooter, the part which remains is only waste and scrap. It is only some of these pieces of steel which is used for the manufacture of

ancillary items and correct tariff heading under which these pieces would fall is 7203.20, the rate being Rs.365/- per ton. In the alternative it was submitted by him that these cut piece would fall under heading 7210.10. The contention of Sh. A. Subba Rao, learned counsel for the respondent, however, was that the appellant had bought sheets and had claimed credit at the rate of Rs.715/- per ton and now when parts thereof are used in manufacture of other items these Portions of Off-cuts would correctly be classified under heading 7212.32.

7.It would, at this stage, be appropriate to set out the three competing entries. These are as follows

"72.03 Waste and Scrap

7203.10 -Of iron Rs.80 per tonne

7203.20 -Of Steel Rs.365 per tonne

72.10 Angles, shapes and sections of iron or steel, not elsewhere specified (other than slotted angles and slotted channels), rolled, forged, extruded, formed, finished slotted angles.

7210.10 - Angles, shapes and sections Rs.365 per tonne (other than slotted angle and slotted channels)

7210.20 Slotted angle 15%

72.12 Coils for re-rolling, sheets, plates, and universal plates of iron or steel, hot or cold rolled, whether galvanized or not; forms such as ridges, channels (other than slotted channels) made from sheets, plates, or universal plates; and tin plates and finned, lacquered or varnished sheets including tin taggers and cutting or such plates, sheets or taggers; slotted channels.

7212.50 - Cold-rolled sheets Rs.715 per tonne"

8. Rule 4 of the Excise Rules provides that "goods which cannot be classified in accordance with the above Rules, shall be classified under heading appropriate to the goods to which they are most akin." Chapter 72 of the Tariff Act deals with iron or steel. The expressions, waste and scrap, angles, shapes and sections and sheet are among several expressions which have been defined therein. These read as follows:

" Waste and scrap:

Waste and scrap of iron or steel fit only for the recovery of metal or for use in the manufacture of chemicals, but does not include slag, ash and other residues. Angles, Shapes and Section: Products which do not have cross-sections in the form of circles segments of circles, ovals, isosceles triangles, rectangles, hexagons, octagons or quadrilaterals with only two sides parallel and the other two sides equal, and which are not hollow. Sheets A hot or cold-rolled flat product, rolled in rectangular section of thickness below 5 millimeters and supplied in straight lengths, the width of which is at least hundred times the thickness and the edges are either milled, trimmed, sheared or flame cut and includes a corrugated sheet".

9. Applying the principle contained in the aforesaid Rule 4 what has to be seen is as to what is the appropriate heading to which the off-cuts which are used by the appellants for the manufacture of ancillary items are most akin. These expressions as contained in Chapter 72 of the Excise Act should be read along with the tariff items contained in the same chapter.

10. It is quite evident that those portions of cut sheets which are used in the manufacture of ancillary items cannot be regarded as waste and scrap. As per the aforesaid definition it is only that 'waste and scrap' of iron or steel which is fit only for the recovery of metal or for use in manufacture of chemicals which could fall under that category. Those portions of cut sheets which are used in the manufacture of ancillary items cannot be regarded as having been used for recovery of metal or for use in the manufacture of chemicals. This being so, those portions of cut sheets which are not used for recovery of metal or in the manufacture of chemicals cannot be cleared under tariff items 72.03. At the same time the definition of the word 'sheet' as contained in Chapter 72 would clearly indicate that the cut sheets which are used by the appellant do not fall under that category. The definition of sheet, inter alia, states that it has to be a hot or cold-rolled flat product, rolled in rectangular section of thickness below 5 millimeters and supplied in straight lengths. It was not disputed that the off-cuts which remains after the parts of the scooter had been manufactured by using the steel sheets no longer retain rectangular shapes. These off-cuts are of different shapes and sizes and, in our opinion, they would clearly fall under the tariff entry 72.10.

11. The off-cuts which are used would clearly answer to the expression 'shape' contained in tariff item 72.10. It does appear that the attention of the tribunal was not drawn to tariff entry 72.10 but on the facts, as found by the tribunal, it is clear that the off-cuts which are odd shaped and are used by the appellant do not answer to this description of sheet but, on the contrary can only be regarded as 'shapes' falling under tariff entry 72.01. The rate of duty of this is Rs.365/- per ton which is the same as that on waste and scrap of steel under tariff entry 7203.20. It is this duty of rs.365/-per ton which has to be paid by the appellant on those pieces of steel or off-cuts which are cleared by the appellant for use in the manufacture of ancillary items and not Rs.715/- per ton demanded by the respondent.

12. The appellant, therefore, was entitled to clear the off-cuts of steels by paying duty under tariff enter 72.10 at the rate of Rs.365/- per ton. Consequently, this appeal is allowed and the orders of the Tribunal as well as the Assistant Collector and the Collector, Appeals, are set aside. There will be no order us to costs.