SUPREME COURT OF INDIA

Bhupendra Steel (P) Ltd.

Vs.

Commissioner of Central Excise

C.A.No.172 of 2003

(Ashok Bhan and Dalveer Bhandari JJ.)

16.05.2008

JUDGMENT

Ashok Bhan, J.

1. This Appeal has been filed by the appellant-assessee under Section 35-L of the *Central Excise Act, 1944* (for short 'the Act') against Final Order No.186/2002-B dated 14.05.2002 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (for short 'the Tribunal') in Appeal No.E/5482/92-B.

2. The point involved in this appeal is, whether the final products manufactured by the appellant are eligible for exemption under Notification No.208/83-CE dated 1.8.1983, as amended from time to time.

3. Briefly stated the facts giving rise to the filing of the present appeal, are as under:

4. Appellant-assessee, hereinafter referred to as the 'assessee' is engaged in the manufacture of Steel bars and rods falling under sub-heading 7228.30 and steel ingots falling under sub-heading 7226.20 of *Central Excise and Tariff Act, 1985* (for short 'the Tariff Act'). The Government of India vide Notification No.208/83-CE dated 1st August, 1983, as amended by Notification No.90/88-CE dated 1.3.1988 and Notification No.202/88-CE dated 20.5.1988 exempted certain final products falling under Chapter 72 from the whole of central excise duty, if they are produced out of the specified inputs described in (co.2) of the said notification on which the duty has already been paid. As per the explanation to the notification, inputs purchase from the market will be deemed to be duty paid except such stocks as are clearly recognizable as being non duty paid and charged to nil rate of duty.

5. Three show cause notices were issued to the assessee for the periods October, 1987 to March, 1988, April, 1988 to June, 1988 and September,1988 to February, 1989 demanding duty of Rs.2,65,849.57, Rs.4,41,394.50 and Rs.59,569.82 respectively.

6. The assessee had purchased iron and steel scrap from the local market and used the same in the form of specified inputs (for availing the benefit of exemption under Notification Nos. (i) 208/83-CE dated 1.8.1983; (ii) 90/88- CE dated 1.3.1988 and (iii) 202/88-CE dated 20.5.1988) for the manufacture of steel ingots. The samples drawn at the time of seizure established that the assessee had purchased iron and steel, bazaar scrap including turning and boring, old dismantled machinery, old broker engineering goods, punch steel metal, containers and other broken articles of iron and steel including small percentage of sample pieces of rods, flats end cutting, on which duty might not have been paid at the time of clearance.

7. In its replies to the each of the three show cause notices referred to above, the assessee reiterated that all the inputs which had been used by the assessee are classifiable only under sub-item (8) of erstwhile T.I. 25because all these goods are roughly shaped and have not been specified anywhere else. T.I. 25 (8) of the erstwhile Tariff read as under: -

"(8) Pieces roughly shaped by rolling or forging of iron or steel, not elsewhere specified".

8. Prior to 28.2.1986 the Central Excise Tariff was contained in the *Schedule to the Central Excises and Salt Act, 1944*. Consequent to the enactment of the *Central Excise Tariff Act, 1985, the Tariff* was delinked from the *Central Excises & Salt Act*. The said *Tariff Act 1985* came into effect from 28.2.1986. In Section XV of the *Central Excise Tariff Act, Chapter 72* provided for iron and steel and Chapter 73 for articles of iron and steel. Heading No. 72.03 provided for waste and scrap of iron and steel and Heading No. 72.08 provided for "pieces roughly shaped by rolling or forging of iron or steel, not elsewhere specified". Heading No. 72.08, thus, was the same as T.I. 25(8) of the erstwhile Tariff.

9. Likewise, "waste and scrap" as defined in the erstwhile tariff means:-

> "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".
>
> The same definition continued in the new Tariff. However, by the *Finance Act, 1988*, "waste and scrap" came to be defined in Section Note 6 to Section 15, as meaning:
>
> "Metals and metal goods definitely not usable as such because of breakage, cutting up, wear or other reasons".

10. Even though the Tariff had undergone some changes before and after the Central Excise Tariff Act, 1985, the assessee, in all its replies, referred only to T.I. 25(8) of erstwhile Tariff. Be that as it may, the Department's submission is that, as far as the entitlement of the assessee to the benefit of the Notification is concerned, the position remained the same before and after the *Central Excise Tariff Act, 1985*.

11. Insofar as the facts of the present case are concerned, the benefit of the notifications is available to an assessee who used specified inputs. In the present case, the claim made by the assessee has been that the inputs used were “pieces roughly shaped". These are described as such in all the three notifications where the reference is specifically to "pieces roughly shaped".

12. The Assistant Commissioner in her order held that they are not pieces roughly shaped under 7208.00 but are melting scrap which is not duty paid. She also found that the words "pieces roughly shaped" had been inserted later in the invoices from the traders. It was further held that inputs brought in by the assessee are neither covered by the erstwhile Tariff Item 25(8) nor fewer than 7208.00 as specified under Notification No. 208/88-CE dated 20.5.1988. In the Order-in-Appeal dated 13.8.1992, the Commissioner (Appeals) found that the finding recorded by the Assistant Commissioner to the effect that the inputs procured by the assessee from the open market were being used by them by way of melting and then obtaining their final products, had not been contradicted or rebutted by the assessee in the Appeal. The Commissioner (Appeals) referred to the definition of the term "waste and scrap" before and after 1988 and held that the inputs have been correctly held to be waste and scrap by the Assistant Commissioner.

13. The Tribunal in its order dated 14.5.2002, approved the order of the Commissioner (Appeals) and held that the benefit of the Notification is not available to the assessee since the inputs used by them are not specified in the Notifications. The Tribunal confirmed that the finding that the words "pieces roughly shaped" were written later on the invoices issued by the traders, had not been rebutted by the assessee and also that they fell within the definition of "waste and scrap" before and after the amendment.

14. Attention of the Tribunal had also been drawn to its earlier decision in the case of the same assessee, where the benefit of Notification No. 208/83-CE had been denied to the *assessee*[1]. The said decision was taken in appeal before this Court by the assessee and this Court in *Bhupendera Steels (P) Ltd. v. CCE*[2] held that tariff Item 25(8), as it then was, would not cover pieces of bars, rods, flats, etc. which are cut-off from the main item. This Court also took note of the Revenue's allegation that the assessee had purchased the ends of flats from scrap dealers, which had not been denied. This also indicates that ends of flats do not fall under Item 25(8). Since the Notification does not cover either "waste and scrap" or "flats", the assessee would not be entitled to exemption under Notification No.208/83. It was further held that it was for the assessee to show under what sub-item the inputs used by them fall. Since they did not fall under sub-item (8) of T.I. 25 and taking into consideration the fact that the ends of flats had been purchased from scrap dealers, this Court held that the inputs did not fall under sub-item (8).

15. Counsel appearing for the assessee fairly conceded that insofar as period from October, 1987 to March, 1988 is concerned, the point in issue stands concluded against

the assessee by a judgment of this Court in assessee's own case i.e. Bhupendera Steels (P) Ltd (supra).

16. Insofar as the subsequent periods are concerned, they are governed by Notification Nos. 90/88 dated 01.03.1988 and 202/88-CE dated 20.5.1988 which provides:

> "In exercise of the powers conferred by sub-rule (1) of rule 8 of the *Central Excise Rules, 1944*, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 208/83-Central Excise, dated the 1st August, 1983, the Central Government hereby exempts goods of the description specified in column (3) of the table hereto annexed (such goods being hereinafter referred to as "final products") and falling within Chapter 72, 73 or 84 of the Schedule to the *Central Excise Tariff Act, 1985* (5 of 1986), from the whole of the duty of excise leviable thereon which is specified in the said Schedule:
>
> Provided that such final products are made from any goods of the description specified in the corresponding entry in column (2) of the said Table (such goods being hereinafter referred to as "inputs") and falling within the Chapter 72 or 73 of the said Schedule on which the duty of excise leviable under the said Schedule or the additional duty leviable under the *Customs Tariff Act, 1975* (51 of 1975), as the case may be, has already been paid:
>
> Provided further that no credit of the duty paid on the inputs has been taken under rule 56A or rule 57A of the said rules.
>
> Explanation - For the purposes of this notification, all stocks of inputs in the country, except such stocks as are clearly recognizable as being non-duty paid, shall be deemed to be inputs on which duty has already been paid.

S.No.	Description of Inputs	Description of final products
01.	XXX	XXX
02.	Ingots or other pimary forms of (i) non-alloy steel (ii) stainless steel and (iii) other alloy steel; semi-finished products of (i) non-alloy steel (ii) stainless steel and (iii) other alloy steel; pieces roughly shaped by rolling of iron or steel;---	XXX (i) XXX (ii) XXX (iii) other alloy steel; semi-finished products of (i) non- alloy steel(ii) stainless steel and(iii) other alloy steel; pieces roughly shaped by ruling of iron or steel; bars and rods, ...
03.	XXX	XXX
04.	XXX	XXX

> [Notification No. 90/88-C.E., dated 1-3-1988]"

17. A bare reading of the aforesaid two notifications shows that assessee has to satisfy two conditions for availing the exemption under both the notifications (i) that the products are made from any goods of description specified in the corresponding entry in column 2 and (ii) they should fall within Chapter 72 of the Tariff Act.

18. The submission put forth, at the time of hearing, by the learned counsel for the assessee before this Court, that the input would fall under heading 72.08, namely, flat rolled products of item etc., runs contrary to what has been held by this Court in the assessee's own case, referred to above. As the Notifications themselves provided, the inputs had to be pieces roughly shaped by rolling or iron or steel. Obviously, enough, they cannot be flat rolled "products" or iron. As held by this Court, pieces of bars, rods, flat etc., which are cut off from the main item, cannot qualify as pieces which are roughly shaped by rolling or forging.

19. The learned counsel for the appellant placed reliance on the definition of "waste and scrap" as given in Note 6 to Section XV of the Tariff. Prior to 1988 the definition read as under:

> "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 resides."

20. The definition 1988 onwards read as under:

> "Metal waste and scrap from the manufacture or mechanical working of metals, and metal goods definitely not usable as such because of breakage, cutting-up, wear or other reasons."

21. The Revenue's case has been that the assessee had purchased trimmings and forgings, old dismantled machines, old broken engineering goods, punched steel metal containers and other broken articles. These certainly cannot be treated as "pieces roughly shaped".

22. As far as the period after the introduction of present definition in Note 6 is concerned, the inputs are squarely covered by the definition of waste and scrap and waste and scrap does not find any mention in Notification No. 202/88 or 90/88.

23. For the reasons stated above, we do not find merit in this appeal and dismiss the same with costs.

[1]*[1994 (70) ELT 151]*
[2]*[(2002) 7 SCC 528]*