

COLLECTOR OF CENTRAL EXCISE, CHANDIGARH

A

v.

M/S. STEEL STRIPS LTD. SANGRUR

MAY 2, 1995

[A.M. AHMADI, C.J., S.P. BHARUCHA AND  
K.S. PARIPOORNAN, J.J.]

B

*Central Excise Tariff:*

*Tariff Item 26AA—Cold rolled steel strips—Excise duty payable on—Excise authorities alleging the article to be the result of process of manufacture—Held, excise authorities should have led evidence before first adjudicating authority—Failure to lay requisite evidence cannot be made up by reference to authoritative publication unless assessee is informed of it.*

C

The assessee carried on the business of making cold rolled steel strips from hot rolled steel strips, an article covered under Tariff Item No. 26AA of the Central Excise Tariff. In view of the exemption notification no. 55/80 dated 13.5.1980, excise duty payable on cold rolled steel strips and hot rolled steel strips was Rs. 650 and Rs. 450 per metric tonne respectively. Though the assessee had paid excise duty on hot rolled steel strips, the excise authorities held that since hot rolled steel strips underwent a process of manufacture at the hands of the assessee before production as cold rolled steel strips, the assessee was required to pay excise duty at the rate of Rs. 650 per metric tonne on cold rolled steel strips also. The assessee appealed to the Customs, Excise and Gold (Control) Appellate Tribunal, which allowed the appeals.

D

E

F

In the appeals filed by the Revenue before this Court, reliance was placed on certain publications. Reference was also made to a publication of the Indian Standards Institute and the Specification therein for Cold Rolled Carbon Steel Strips for general engineering purposes. However, there was no evidence on record in regard to the process adopted in producing cold rolled steel strips from hot rolled steel strips.

G

Dismissing the appeals, this Court

HELD : 1. When the excise authorities allege that an article is the

H

A result of a process of manufacture and is commercially distinct and known as such, it is for them to lay evidence in this behalf before the first adjudicating authority. In appropriate cases, the excise authorities may seek a direction requiring the assessee to set out in writing what it does to obtain the article. The experience of this Court and of the High Courts before the establishment of the Tribunal, shows that lack of evidence has led to the failure of the case of the excise authorities, and, consequently, to the loss or revenue to the State. [1054-G-H, 1055-A]

2. Failure to lay the request evidence cannot be made up by reference to authoritative publications unless the Excise authorities inform the assessee that they propose to rely upon the same before the adjudicating authority. In matters relating to excise, technical knowledge plays a part, and that is why the Tribunal has a Technical Member. Technical evidence and authoritative publications must, therefore, be placed in the first instance before the adjudicating authority and the Tribunal. [1055-C]

D *"The Making, Shaping & Treating of Steel"*, (8th Edn.) by Harold E. McGannon, referred to.

3. Upon the material on record, it is not proved that hot rolled steel strips undergo a process of manufacture before they become cold rolled steel strips. Therefore, the Excise authorities cannot claim that the assessee's cold rolled steel strips are liable to excise duty at the rate of Rs. 650 per metric tonne. [1055-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 438 of 1989 Etc.

F From the Judgment and Order dated 29.9.88 of the Central Excise and Salt Act, 1944 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in A.No.E./1567/88B-1, Order No. 423/88-B.

G P. Parmeswaran, Sarva Mitter for M/s. Miter & Motter Co. Sumaj J. Khaitan for M/s. Khaitan & Co., R. Karanjawala, Mrs. M. Karanjawala K.L. Hathi, for M/s Hathi & Co., D.N. Mishra, for JBD & Co. and C.V.S. Subba Rao for the appearing parties.

The Judgment of the Court was delivered by

H **BHARUCHA, J.** These appeals may be disposed of by a common

judgment inasmuch as the Customs, Excise and Gold (Control) Appellate Tribunal allowed the appeal in the case of M/s. Steel Strips Ltd. (Civil Appeal No. 438 of 1989 before us) following its judgment in the case of M/s. Atma Steel Pvt. Ltd. (Civil Appeal No. 3524 of 1986 before us). A

The assessee makes cold rolled steel strips from hot rolled steel strips. The applicable entry of the Central Excise Tariff is Tariff Item No. 26AA, which deals with "Iron or steel products, the following, namely : B.

xxx

xxx

xxx

(iii) Flats, skelp and strips C

xxx

xxx

xxx

For the relevant period being March 1982 to February 1986, an Exemption Notification was in operation in regard to steel strips, being notification no.55/80 dated 13th May, 1980, as amended, issued under rule 8 of the Central Excise Rules, 1944. It exempted galvanised strips and other than galvanised strips from so much of the basic excise duty leviable thereon as was in excess of Rs.850 per metric tonne and Rs. 350 per metric tonne respectively. It then referred to "other cold-rolled strips" and "the hot-rolled "strips" and exempted them from so much of the basic excise duty leviable thereon as was in excess of Rs.650 per metric tonne and Rs. 450 per metric tonne respectively. D

It was the case of the Excise authorities that cold rolled strips were obtained by the assessee by a process of manufacture and were entitled to exemption from so much of the basic excise duty leviable thereon, namely, Rs.1350 per M.T., as was in excess of Rs.650 per M.T. In other words, the effective rate of excise duty that the assessee was obliged to pay, according to the Excise authorities, was Rs.650 per m.t. In this behalf, the strips of the assessee M/s Atma Steel were confiscated and a penalty imposed. The assessee Atma Steel appealed to the Tribunal and the Tribunal allowed the appeal. E

The contention of the Excise authorities is that hot rolled strips, upon which excise duty had, admittedly, been paid, underwent a process of manufacture at the hands of the assessee which resulted in the production of cold rolled strips, upon which excise duty had to be paid at the effective F

G

H

A rate of Rs.650 per tonne. We find no evidence upon the record in regard to what happens to hot rolled steel strips before cold rolled steel strips are produced.

B The lacuna is sought to be made up by learned counsel for the Excise authorities by referring to a publication of the Indian Standards Institution and the Specification therein for cold rolled carbon steel strips for general engineering purposes. Para 0.3 of the Foreword thereto, which is relied upon, states : "Cold rolled steel strip is produced by cold rolling descaled hot rolled strip between plain rolls to obtain a bright surface, closely controlled gauge, thinner gauges and a variety of tempers." Reliance is C also placed upon the 8th Edition of a book entitled "The Making, Shaping & Treating of Steel" by Harold E. McGannon. Section 6 thereof deals with the principal methods for cold working and, in relation to cold rolling, it states : "Cold working by cold rolling consists of passing unheated, previously hot-rolled bars, sheets or strip (cleaned of scale) through a set of D rolls, often many times, until the final size is obtained". The methods and effects of cold rolling wide strips are discussed in detail in Chapter 32 of the book. The relevant part of chapter 32 is Section 2, dealing with Principles of Cold Reduction, and it states this:

E "Cold rolling is a generic term applied to the operation of passing unheated metal through rolls for the purpose of reducing its thickness; producing a smooth, dense surface; and, with or without subsequent heat treatment, developing controlled mechanical properties. Any single one or combination of these three effects may be the reason for cold rolling of a particular product. Actually, F in terms of modern nomenclature of the steel industry, cold rolling implies a rolling operation in which the thickness of the material is reduced a relatively small amount - usually just enough to produce a superior surface or impart the desired mechanical properties to the rolled material."

G It cannot be sufficiently emphasised that when it is the case of the Excise authorities that an article is the result of a process of manufacture and it is commercially distinct and known as such, it is for the Excise authorities to lay evidence in this behalf before the first adjudicating authority regardless of the fact that he is an officer of the Excise department. There should, ordinarily, be no difficulty in establishing that the H

article is the result of a process of manufacture; in the event of difficulty, it would be open to the Excise authorities to seek a direction requiring the assessee to set out in writing what it does to obtain the article. Too often, as our experience in this Court and in the High Courts, before the Tribunal was established, shows, lack of evidence has led to the failure of the case of the Excise authorities and, consequently, to the loss of revenue to the State.

Failure to lay the requisite evidence cannot be made up by reference to authoritative publications unless the Excise authorities inform the assessee that they propose to rely upon the same before the adjudicating authority. It is then open to the assessee to establish that it does not obtain the article by the means referred to in the publication or, indeed, that the publication is not authoritative. In the decision of matters relating to excise, technical knowledge plays a part. It is for that reason that the Tribunal has a Technical Member. Technical evidence and authoritative publications must, therefore, be placed in the first instance before the adjudicating authority and the Tribunal. They have the requisite 'technical expertise to evaluate the same. Technical publications cannot usefully be cited for the first time at the Bar of this Court.

Upon such material as has been referred to by learned counsel for the Excise authorities, which we have set out above, we find it 'not proved' that hot rolled strips undergo a process of manufacture before they become cold rolled strips. We are, therefore, unable to accept the contention of the Excise authorities that the assessee's cold rolled strips are liable to excise duty at the rate of Rs. 650 per metric tonne.

The appeals are dismissed. There shall be no order as to costs.

R.P.

Appeal dismissed.