

M/S. BALAJI ENTERPRISES, MADRAS

A

v.

THE COLLECTOR OF CENTRAL EXCISE, MADRAS

MAY 5, 1997

[S.P. BHARUCHA AND SUHAS C. SEN, JJ.]

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Central Excise Tariff :

Tariff Items 27(a)(i) and 27(b) as they stood prior to amendment w.e.f. 1.3.1981—'Aluminium Scrap'—Levy of duty on—Held, 'aluminium scrap' generated in course of manufacture of aluminium containers cannot be treated as aluminium in crude form and taxed under T.I. 27(a)(i).

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Customs, Excise and Gold (Control) Appellate Tribunal—Jurisdiction of—Held, Tribunal should examine the question of law raised before it and give proper answer.

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Words and Phrases :

Word 'crude' occurring in Tariff Item 27(a)(i) of Central Excise Tariff—Meaning of.

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The appellant-assessee, a manufacturer of aluminium containers, was required to pay duty on aluminium scrap. The duty was to be paid on the value of the scrap at the rate of 40 percent under Tariff Item 27(a)(i) of the Central Excise Tariff. The assessee resisted the levy contending that the scraps generated in the course of manufacturing utensils could not be classified under T.I. 27(a)(i). Assessee's case was that it purchased aluminium ingots from open market, melted and converted them into slabs, then sheets and ultimately in circles; the circles were then converted into containers on which duty was paid. In the process of manufacture, while converting circles into containers, waste product such as aluminium scrap came into existence, which could not be classified under T.I. 27(a)(i). Assessee's case was rejected and ultimately the Customs, Excise and Gold (Control) Appellate Tribunal also held against it. Aggrieved, the assessee filed the present appeal.

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It was contended for the appellant-assessee that "aluminium scrap"

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A left after manufacturing the products like utensils could not be treated as "aluminium in any crude form" as described in T.I. 27(a)(i), and as such it could not be brought to tax under the said entry.

Allowing the appeal, this Court

B HELD : 1.1. The aluminium scrap produced by the assessee in course of manufacturing utensils cannot be treated as aluminium in crude form and classified as such in T.I. 27(a)(i); and therefore the same could not be taxed under T.I. 27 before its amendment on 1.3.1981. [61-B]

C 1.2. The 'crude form' of aluminium as described in sub-item (a)(i) of Tariff Item 27, will include ingots, bars, blocks, slabs, billets, shots and pellets, i.e. the most primary form of the metal. The appellant manufactures circles which have been specifically included in T.I. 27(b) which speaks of aluminium manufactures. When ingots are converted into circles, the end products or by-products are not treated as aluminium in crude form and, as such, the scrap which emerges as a result of further manufacturing process, cannot be treated as crude metal. It is an integral part and inevitable consequence of the manufacturing process. [57-F-H; 58-B; C]

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E *M/s. Khandelwal Metal and Engineering Works and Anr. v. Union of India & Ors.*, [1985] 3 SCC 620, relied on.

Webster Comprehensive Dictionary, International Edition, 1984, referred to.

F 1.3. Besides, by virtue of an amendment, 'Waste and Scrap' has specifically been included in sub-heading (aa) of T.I. 27, with effect from 1.3.1981. The obvious legislative intent was not to tax 'aluminium scrap and waste' prior to the said amendment. [58-E; 60-D]

G 2. The Tribunal should have examined the question of law raised before it and given proper answer. Whether the scraps generated during the course of manufacturing utensils should be treated as 'aluminium in crude form' is a question of law that had to be answered fairly and squarely by the Tribunal. It really avoided answering the question. The Tribunal's jurisdiction is not limited to deciding whether the decision of the

H departmental authority was perverse or unreasonable. [61-A; 60-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1403 of 1987. A

From the Judgment and Order dated 27.4.87 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in A. No. 40/83. B1 in (Order No. 294 of 1987-B1).

Krishnan Venugopal and S.R. Setia for the Appellant. B

N.K. Bajpayee, R.S. Rana and P. Parmeswaran for the Respondent.

The Judgment of the Court was delivered by C

SEN, J. The appellant, Balaji Enterprises, purchases aluminium ingots from the market and manufactures aluminium containers which are used according to the permission granted by the Excise Authority under Rule 56A of the Central Excise Rules. The process followed for making the containers has been stated by the appellant in a letter to the Assistant Collector of Central Excise. The appellant melts the ingots, converts them into slabs, rolls them into sheets which are converted into circles. These circles are converted into containers which are sold in the market. The appellant pays duty on the containers manufactured by it in regular course. In the process of manufacturing containers, waste products such as aluminium scrap also come into existence. D
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The Central Excise Authority called upon the appellant to pay duty on the scrap manufactured by it. The appellant was compelled to pay duty on the value of the scrap at the rate of 40 per cent under Tariff Item 27(a)(i) of the Central Excise Tariff. F

The appellant's case before the Department was that 'scraps' generated in course of manufacture of aluminium containers by the appellants, could not be classified under T.I. 27(a)(i) of the Central Excise Tariff which before 1.3.1981 was as under : G

27-ALUMINIUM

Tariff Item No.	Description of goods	Rate of duty	
		Basic	Special Excise
27. ALUMINIUM			

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A	(a)(i)	in any crude form including ingots, bars, blocks, slabs, billets, shots & pellets.	50% Adv. plus Rs. 2000 per metric tonne.	10% of the basic duty chargeable
	(ii)	Wire, bars, wire rods and castings not otherwise specified.	50% Adv. plus Rs. 2000 per metric tonne.	-do-
B	(b)	Manufactures, the following, namely, plates, sheets, circles, strips, shapes and sections in any form or size, not otherwise specified.	-do-	-do-
C	(c)	Foils (whether or not embossed, cut to shape, perforated, coated, printed or backed with paper or other reinforcing material) of a thickness (excluding any backing) not exceeding 0.15 mm.	-do-	-do-
D	(d)	Pipes and tubes other than extruded pipes and tubes	-do-	-do-
E	(e)	Extruded shapes & sections including extruded pipes and tubes.	-do-	-do-
F	(f)	Containers, plain, lacquered, or printed, or lacquered and printed.	-do-	-do-

G *Explanation : I* - "Container" means containers ordinarily intended for packaging of goods for sale, including collapsible tubes, casks, drums, cans, boxes, gas cylinders and pressure containers whether in assembled or unassembled condition, and containers known commercially as flattened or folded containers.

H *Explanation : II* - In this Item, the expression "Aluminium" shall

include any alloy in which aluminium predominates by weight over each of the other metals. A

The appellant's case is that 'aluminium scrap' cannot be described as 'aluminium in any crude form'. Aluminium scraps are not really in crude form. In fact, T.I. 27(a)(i) makes it clear that it is only the commodities known in the market like ingots, bars, blocks, slabs, billets, shots and pellets, which can be taxed under T.I. 27(a)(i). But scraps remaining after manufacturing products like utensils cannot be brought to tax under T.I. 27(a)(i) as 'aluminium in any crude form'. B

T.I. 27(a)(i) speaks of 'aluminium in any crude form'. Ingots, bars, blocks, slabs, billets, shots and pellets have been specifically brought within the Tariff Description. That, however, does not mean that only the articles which have been specifically mentioned in T.I. 27(a)(i) are excisable to duty. The Tariff Description is inclusive which means apart from ingots, bars, blocks, slabs, billets, shots and pellets, other things that may come within the description of 'aluminium in any crude form' will be excisable to duty as such. C D

The problem in this case, however, is about the nature of the scraps produced by the appellant. Can the scraps be regarded as 'aluminium in any crude form'? Obviously Tariff Item 27(a) will not take in aluminium in any finished form. The dictionary meaning of 'crude' is: "In a state needing preparation for use; not refined; raw; uncooked" (Webster Comprehensive Dictionary, International Edition 1984). E

From the Tariff Description it appears that in sub-Item (a)(i) of Tariff Item 27 'crude form' of aluminium will include ingots, bars, blocks, slabs, billets, shots and pellets. That is the most primary form of the metal. Sub-item (b) of Tariff 27 speaks of 'Aluminium Manufactures', namely, plates, sheets, circles, strips, shapes and sections in any form or size not otherwise specified'. There is no dispute that the appellant manufactures circles which have been specifically included in T.I. 27(b) and not T.I. 27(a). 'Circles' have not been included in the Tariff Description in T.I. 27(a)(i). That means 'circles' have not been treated as 'aluminium in any crude form' but 'Aluminium Manufactures'. The assessee manufactures the circles and thereafter aluminium containers out of these circles. The scraps F G H

A are generated while converting circles which are not 'aluminium in crude form' into containers which are finished goods. If anything is made out of the circles, whether as end-product or by-product, it cannot be treated as the metal itself in crude form. The scraps that arise out of the manufacturing process do not go back to the crude form of aluminium. When ingots are converted into circles, the end-products are not treated as aluminium in crude form. In that event, how can something which emerges as a result of further manufacturing process be treated as crude metal? In our view, the aluminium scraps cannot be treated as aluminium in crude form and classified as such in T.I. 27(a)(i).

C In the case of *M/s. Khandelwal Metal and Engineering Works and Anr. v. Union of India & Ors.*, [1985] 3 SCC 620, Chandrachud, C.J. pointed out waste and scrap are by-products of manufacturing. Aluminium scrap which is obtained in course of manufacturing aluminium containers is an integral part and inevitable consequence of the manufacturing process.

D In our view, what emerges as a consequence of a manufacturing process out of the aluminium circles cannot be treated as the metal in crude form.

E The position becomes clearer after the amendment of T.I. 27 on and from 1.3.1981. 'Waste and Scrap' was specifically included in sub-heading (aa) of T.I. 27. The Tariff Description was as under :

AFTER 1.3.1981
ITEM NO. 27 - ALUMINIUM

Item No.	Tariff Description	Rate of Duty
27	ALUMINIUM	
(a)	(i) In any crude form including ingots, bars, blocks, slabs, billets shots and pellers.	Fifty per cent <i>ad valorem</i> plus Rs. two thousand per metric tonne
	(ii) Wire bars, wire tods & castings not otherwise specified.	-do-

(aa)		Waste and Scrap.	-do-	A
(b)			
(c)			
(d)			
(e)			B
(f)			

EXPLANATION I

EXPLANATION II

EXPLANATION III - "Waste and Scrap" means waste and scrap of aluminium fit only for the recovery of metal or for use in the manufacture of chemicals, but does not include sludge, dross, scalings, skimmings, ash and other residuals.

The legislature recognised that 'Waste and Scrap' could not be brought to tax as aluminium in crude form. If 'Waste and Scrap' was already included in Item No. 27(A), there would not have been any need for making the entry (aa). The amendment left sub-item (a) of Item 27 untouched. Moreover, every type of waste and scrap was not made taxable after the amendment made on 1.3.1981. Only the type of waste and scrap mentioned in Explanation III were subjected to duty. Sludge, dross, scalings, skimmings, ash and other residuals were left out. Before 1.3.1981 there was no guideline to decide what would constitute scrap for imposition of Central Excise.

All these things go to show that sub-item (aa) was not clarificatory of sub-item (a) of Item 27. It was a new entry altogether bringing 'Waste and Scrap' for the first time to duty after specifying the limited scope of this entry by adding Explanation III.

It has been rightly contended on behalf of the appellant that whenever things like 'Waste and Scrap', under any head, have been sought to be taxed in the Central Excise Act, specific entries have been made for this purpose. In Tariff Item No. 25 'iron in any crude form' specifically includes pig iron, scrap iron, molten iron or iron cast in any other shape or size. The legislature specifically included the scrap iron within the description

A of 'iron in any crude form' in T.I. 25, but in the description of goods under the head 'aluminium in any crude form', aluminium scraps were not included in T.I. 27. Even when the amendment was made on 1.3.1989, aluminium scraps were separately taxed and not included in 'aluminium in any crude form'.

B Similarly, in the T.I. 18 dealing with man-made fibres, other than mineral fibres, man-made filament yarns, cellulosic spun yarn, 'Non-cellulosic wastes, all sorts' have been specifically included as sub-item (4) of T.I. 18. Sub-item (4) has been explained to include only wastes arising in, or in relation to, the manufacture of man-made fibres (other than mineral fibres) and man-made filament yarns.

C The obvious legislative intent was not to tax aluminium scrap and Waste' prior to the amendment made with effect from 1st March, 1989. What emerged from the manufacturing process was certainly not aluminium in crude form.

D There is also another feature of this case, the Tribunal has not held that aluminium scraps should be described as 'aluminium in any crude form' and brought to tax as such even prior to 1.3.1981. The Tribunal has held :

E "The assessment made by the department favours the revenue but we cannot say that it is a perverse assessment or that the law does not sanction it. While one person may say that word scrap does not belong in the sub-item with ingots, bars and the others, another person may say with equal, I would say more logic, that it does belong in the sub-item. I would not like to disturb an assessment made by the department unless it has perverseness or unreasonableness in it. This assessment is not unreasonable much less perverse."

F G We are of the view the Tribunal has really avoided answering the question of law raised before it. Whether the scraps generated during the course of manufacturing utensils should be treated as 'aluminium in crude form' is a question of law that had to be answered fairly and squarely by the Tribunal. The Tribunal's jurisdiction is not limited to deciding whether H the decision of the departmental authority was perverse or unreasonable.

We are of the view that Tribunal should have examined the question of law before it and given proper answer. A

However, we have examined the question. In our view, the aluminium scraps, produced by the assessee in course of manufacturing utensils, could not be taxed under T.I. 27 before its amendment on 1.3.1981.

The order of the Tribunal is set aside. The appeal is allowed. There will be no order as to costs. B

R.P.

Appeal allowed.