

M/S. BHUPINDRA STEELS (P) LTD.

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v.

COLLECTOR OF CENTRAL EXCISE

SEPTEMBER 17, 2002

[SYED SHAH MOHAMMED QUADRI AND S.N. VARIAVA, JJ.]

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*Central Excises and Salt Act, 1944—Section 3 / Central Excise Rules, 1944—Rules 8(1)—Tariff Items—Sub-item 8—Levy of duty—Notification providing exemption of duty on items manufactured by using inputs falling under sub-item 8—Manufacturer using “ends of Flats”—Exemption claimed—Held, exemption not permissible since “ends of Flats” do not fall under sub-item 8 as it is “waste and scrap”.*

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*Practice and Procedure: Plea raised for the first time before Supreme Court—Held, not permissible.*

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**Appellant-assessee manufacturer of ingots using the inputs “ends of M.S. Flats” sought exemption from excise duty under a Notification stating that the inputs used by it fell under sub-item 8. It was rejected by the Central Excise authorities. Appeal preferred by the assessee was allowed by the Collector (Appeals). However, Tribunal held that appellants were not entitled to exemption under the Notification as the inputs used cannot fall under sub item 8 as that item only deals with products which are given rough shape by the process of rolling and forging and which are given final shape by further processing and it does not cover either “waste of scrap” or “Flats”; that the “ends of Flats” remain “Flats” even after cutting and/or they would remain “waste and scrap” falling u/s 3 of the Act. In appeal to this Court appellant contended that “ends of Flats” cannot be considered as “Flats” as “Flat” has to be a finished product, while “ends of Flats” are never finished; and that “ends of Flats” could not be “waste and scrap” as the same could be used only for recovery of metal or in the manufacture of chemicals; that though they were using the “ends of Flats” for recovery of metal, however it was being used by others for making various items like knives, forks etc; and that even if “ends of Flats” do not fall under sub-item 8, they would fall under sub-item 11 which is also included in the Notification.**

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- A** Respondent contended that “ends of Flats” are sold off as “waste and scrap” by flat manufacturers; and that the appellants had purchased them from the scrap dealers.

Dismissing the appeal, the Court

- B** HELD: 1. Sub-item 8 would not cover pieces of bars, rods, flats etc. which are cut off from the main item. The “ends of Flats” cannot be pieces, which are roughly shaped by rolling or forging. Sub-item 8 deals with pieces of iron and steel which are given a rough shape by the process of rolling or forging. The fact that “ends of Flats” are sold off as “waste or scrap” by “Flat” manufacturers and that the appellants had purchased the same from scrap dealers also indicates that “ends of Flats” do not fall under Sub-item 8. As the inputs do not fall under Sub-item 8, the appellant would not be entitled to exemption under the Notification. [417-D-F]

- D** 2. Appellant cannot be permitted to take a plea that if “ends of Flats” do not fall under sub-item 8, they would fall under sub-item 11 which is also included in the Notification. Such a case is being made out for the first time before this Court. The appellants have not claimed exemption under the Notification on that basis. [417-F, G]

- E** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2305 of 1994.

From the Judgment and Order dated 26.5.1993 of the Central Excise Customs and Gold (Contro) Appellate Tribunal, New Delhi in E/A. No. 1895 of 1986-B1 in O. No. E/121/93B1.

- F** WITH

Civil Appeal No. 4843 of 1994.

- G** A.K. Jain, Rajesh Jain, Vineet Bhata and Ms. Amita Gupta, for the Appellants.

S. Ganesh, Dileep Tandon and B. Krishna Prasad, for the Respondent.

The Judgment of the Court was delivered by

- H** VARIAVA, J. This appeal is against the Order dated 26th May, 1993

passed by the Customs Excise and Gold (Control) Appellate Tribunal.

Briefly stated the facts are as follows:

The Appellants are manufacturers of ingots. Ingots are manufactured out of, among others, ends of M.S. Flats. The Appellants claimed exemption under Notification No. 208/83 dated 1st August, 1983. The relevant portion of the said Notification reads as follows:

“(4) In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, 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 under Item No.2 of the First Schedule to the Central Excise and Salt Act, 1944 (of 1944) from the whole of the duty of excise leviable thereon under Section 3 of the said Act.

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 under the said item on which the duty of excise leviable under the Customs Tariff Act, 1975(5) 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 56 A of the said rules.

*Explanation:* For the purposes of this notification, all stocks of inputs in the country, except such stocks as are clearly recognisable as being non-duty paid, shall be deemed to be inputs on which duty has already been paid.

#### THE TABLE

S.No.	Description of inputs	Description of final products
1.	Goods falling under sub-item (1)(I)(ii) 4(I), 6(I) and 16(I) of the said item.	Goods falling under sub-item (1)(3)(I)(4)(I)(6)(I) and (16)(I) of the said item Iron sleepers and tubes and pipes and blanks therefor or iron.

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| A | 2. Goods falling under sub-items 6(ii) and (iii) (7)(ii), (7)(ii), (8), (9)(ii) and (II) of the said item. | Goods falling under sub-items (4)(ii), (6)(ii) and (iii), (7)(ii) (8), (9)(ii), (10), (11), (14) and (16)(ii) of the said item. Flats exceeding 5 mm in thickness, and hot-rolled strips, other than galvanised strips, exceeding 5 mm in thickness." |
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- The Appellants claimed that the inputs used by them viz. "ends of M.S. Flats" fell under Sub-Item 8 and their final product fell under Sub-Item 6(II). On 1st August, 1985, the Superintendent, Central Excise served a Show Cause Notice calling upon the Appellants to show cause why the exemption availed of, from 17.2.1985 to 31.3.1985, be not withdrawn. The Appellants filed their reply dated 29th August, 1985. The Appellants claimed that the inputs namely pieces of steel roughly shaped by action of rolling or forging fell under Sub-Item 8. By an Order dated 18th December, 1985, it was held that the Appellants were not entitled to exemption under the above mentioned Notification. The appeal filed by the Appellants before the Collector (Appeals) was allowed on 29th April, 1986.

- The Collector then filed an appeal under Section 35-B before the Customs Excise & Gold (Control) Appellate Tribunal. By the impugned order that Appeal has been allowed. It has been held that the inputs used by the Appellants cannot fall under Sub-Item 8 as that item only deals with products which are given a rough shape by the process of rolling and forging and which are then given their final shape by further processing. It has been held that the "ends of Flats" remain "Flats" even after cutting and/or they would be "waste and scrap" falling under Sub-Item 3. It has been held that as the Notification does not cover either "waste and scrap" or "Flats", the Appellants would not be entitled to exemption under this Notification.

- Mr. A.K. Jain has, in assailing the judgment, submitted that the Tribunal is entirely wrong in coming to the conclusion that the "ends of Flats" are "Flats". He submits that explanation No. XXI describes a "Flat" as follows:

- "(xxi) "flats" means finished products, generally of rectangular cross-section, having rolled edges only (square or slightly rounded), of controlled contour and of thickness 3 millimetres and over, width 400 millimetres and below had supplied in straight lengths and includes flat bars with bulb that has swelling on one or two faces of the same edge and a width of less than 400 millimetres."

He also points out that under explanation (ix), the term “waste and scrap” has been described as follows: A

“(ix) ‘waste and scrap’ 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.” B

He submits that “Flat” necessarily has to be a finished product. He submits that ends of flat are never finished. He submits that ends of Flats cannot be considered as Flats. He further submits that an item would be waste or scrap if it could be only used for recovery of metal or used in the manufacture of chemicals. He admits that the ends of Flats are used by the Appellants for recovery of metal. He however submits that ends of Flats are being used by others for making various items like knives, forks etc. He submits that thus the ends of Flats could not be “waste and scrap”. We are unable to accept the submission of Mr. Jain. To claim exemption under the Notification No. 208/83 the Appellants have to show under what Sub-Item the inputs used by them fall. The Appellants have claimed benefit of the Notification on the ground that input falls under Sub-Item 8. In our view the ends of flats cannot be pieces which are roughly shaped by rolling or forging. Sub-Item 8 deals with pieces of iron and steel which are given a rough shape by the process of rolling or forging. Sub-Item 8 would not cover pieces of bars, rods, flats etc. which are cut off from the main item. C D E

Mr. Ganesh also points out that the manufacturer of Flats would sell off the ends of Flats as waste and scrap. He points out that the Appellants have purchased the ends of flats from scrap dealers. That the Appellants have purchased from scrap dealers is not denied. In our view this also indicates that ends of Flats do not fall under Sub-Item 8. As the inputs do not fall under Sub-Item 8, the Appellant would not be entitled to exemption under the Notification. F

Faced with the situation Mr. Jain submitted that even if cuts of flats do not fall under the Sub-Item 8, they would fall under Sub-Item 11. He admits that this Sub-Item is also included in the Notification as an input. Such a case is being made out for the first time in arguments before this Court. The Appellants have not claimed exemption under the Notification on this basis. We, therefore, do not permit Mr. Jain to raise such a contention. G

We see no infirmity in the impugned judgment. We see no reason to H

**A** interfere. The Appeal stands dismissed. There shall be no order as to costs.

We have today in Civil Appeal No. 2305 of 1994 held that the appellants are not entitled to exemption under Notification No. 208/83. In this case the only difference is that the inputs are different. On the reasoning given in that judgment these inputs would not fall under Sub-Item 8. Therefore this Appeal

**B** also stands dismissed. There shall be no order as to costs.

K.K.T.

Appeals dismissed.