

**Commissioner of Central Excise Vs. Sharp Alloys Ltd.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Mar-07-1998

**Reported in :** (1998)(100)ELT153Tri(Mum.)bai

**Appellant :** Commissioner of Central Excise

**Respondent :** Sharp Alloys Ltd.

**Judgement :**

1. The respondent in this appeal is M/s. Sharp Alloys Ltd. It received various consignments, originally stated by the manufacturer to be rounds of non-alloy steel, from the person to whom the manufacturer consigned these consignments. The record shows that the various consignees rejected the consignment on the ground that they were not in conformity with the specifications ordered. The endorsement on the invoices are of identically worded. One endorsement is reproduced below is :- "The entire consignment is not as per our specifications and requirement and hence it is scrapped and this material sold to our approved buyer M/s. Sharp Alloys Limited, MIDC, Murbad for recovery of metal".

2. The respondent took credit of the duty paid on the goods. This was objected to by the department on the view that the consignees of the goods had converted the goods into scrap and therefore credit could not be taken of the duty paid on rounds. The Assistant Collector confirmed the proposal in the notice issued on this basis. The Collector (Appeals) in his order held that it was evident that the consignees of the goods did not accept them as they did not agree to their requirement and sold them to the respondent. They were covered by the Modvat

declaration and therefore credit was rightly taken. Hence this appeal by the department.

4. The grounds in the appeal is the reiteration of the basis of the notice, that what was received was scrap and not rounds. This is sought to be supported by contending that the respondent did not furnish information to show that it received rounds and not scrap and that the cost of rounds is Rs. 81,240/-which exceeds by 100 to 50% the costs of the goods that the respondent receives the raw materials. These grounds were reiterated twice by the departmental representative.

5. We have seen the endorsement of the consignees who sold the goods says that the goods were 'occupied'. The primary meaning of the word "scrap" used in the Chambers Dictionary is "consign to the scrapheap, to discard, cease to use, do away with, abandon". We do not find any material in the appeal that can successfully challenge the finding of the Commissioner when he says that the goods were sold to the respondent after the consignees rejected them as they did not suit their requirement. There is nothing to show that the consignees worked on the goods in order to change their shape or size. The contentions that the assessee normally uses scrap as raw material which has not been substantiated by any material and therefore cannot be accepted.

More than 20 consignments were received by the respondent. Nothing prevented the department from enquiring into the matter to ascertain the correct position. We do not find any basis to interfere.

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