

**Amar Wire and Rolling Mill Vs. Commr. of Central Excise**

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

**Decided On :** Mar-05-1999

**Reported in :** (1999)(114)ELT41TriDel

**Appellant :** Amar Wire and Rolling Mill

**Respondent :** Commr. of Central Excise

**Judgement :**

1. The short point for determination in this appeal is whether scaling, ash and cuprous residues are covered under waste and scrap so as to attract Central Excise duty. The lower authority held that scaling, ash and other residues are covered under waste and scrap and attracted duty being Central Excise goods.

2. None appeared for the appellants. However, they have made a request for considering the appeal on merits. Shri S. Nunthuk, learned DR appears for the respondent Commissioner and submits that during the material period, there was a specific heading to cover waste and scrap of copper. He submitted that before the introduction of new tariff under Central Excise Tariff Act, 1985, there is a specific provision in the language of Explanation II that scalings, ash etc. will not be covered by waste and scrap. He submitted that since before the introduction of the new Tariff with effect from 28-2-1986, there was no explanation excluding scalings and ash from waste and scrap, the lower authority has rightly held that scalings, ash and other residues shall attract duty as waste and scrap.

3. The appellants in this case have referred to the decision of the Hon'ble Supreme Court in the case of Union of India v. Indian Aluminium Company [1995 (77) E.L.T. 268]. The Apex Court in this case had before it the excisability of aluminium dross and skimmings and the Apex Court held that dross and skimmings even if marketed for same value, are not waste and scrap of aluminium and are not excisable so as to be excisable to duty. In the instant case, we note that scalings, ash and residues are more or less akin to dross and skimmings dealt with by the Apex Court in the case cited supra. Following the ratio of the Apex Court decision in the case of Indian Aluminium Company, we hold that scalings, ash and residues of copper in the instant case, are not goods for the purpose of levy of Central Excise duty. In this view of the matter, the impugned order is set aside and the appeal is allowed.

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