

Collector of Central Excise Vs. I.T.W. Signode India Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-27-2005

Reported in : (2005)(102)ECC433

Judge : R Abichandani, M T K.C.

Appellant : Collector of Central Excise

Respondent : i.T.W. Signode India Ltd.

Judgement :

1. This appeal comes up before us for hearing it afresh on remand, in light of the decision of the Supreme Court in Civil Appeal No. 7868 rendered on 9th November, 2003 by which the Supreme Court set aside the judgment and order of the Tribunal dated 6-4-95 wherein it was held by majority that the goods in question were excisable and classifiable under Heading No. 7308.90 of the Excise Tariff.

2. The assessee had started production of Tensile Steel Strappings in 1983 without a licence claiming that the said goods were nothing other than steel strips on which appropriate Central Excise duty liability was discharged at the point of their procurement. The raw material i.e.

steel coils was directly sent to some other units for job work such as slitting, pickling and cold rolling and the resultant product i.e. cold rolled steel strips was cleared on payment of duty and duly received by the assessee. These cold rolled

steel strips were cut into smaller width and subjected to the processes of heat treatment, waxing and painting. The jurisdictional Asstt. Collector had approved the assessee's claim that the final product was non-excisable in view of the fact that the conversion of the steel strips into steel strappings was not considered as a process of manufacture. However, a show cause notice dated 8th April, 1997 came to be issued on the assessee under Rule 9(2) read with Section 11A demanding an amount of Rs. 1,13,82,247/- on the ground that the said conversion of steel strips into steel strappings was a process of manufacture, in respect of which the assessee failed to pay appropriate duty. The department felt that, prima facie, the steel strips merit classification under Chapter sub-heading 7308.90 as 'other articles of steel.

2.1 The Collector of Central Excise, after considering the various aspects of the matter, found that decoiling, slitting, pin hole detecting, side trimming, deburring, cutting, welding, heating, painting, waxing, etc. did not alter the essential characteristics of the goods viz. the strips. The various processes only made strips, of uniform length, size, thickness and free from any holes or damage, etc.

It was held that the arguments put forth by the assessee that these processes did not bring into existence a new product appeared to be having a considerable force because these processes did not change the basic characteristics or the qualities of the strips and the final product remained strips when read with the definition of "strips" in the Tariff. It was held that "steel strappings" fitted in the more specific description viz. "strips" than the general description under Chapter sub-heading No. 7308.90 under which the Department had sought the goods to be classified. The Collector held that there was no material to warrant a change of classification and that the processes did not involve a manufacture within the meaning of Section 2(f) of the Act.

3. The Revenue preferred an appeal against this order contending that there was a change brought out in the characteristics of the cold rolled strips when that raw material was subjected to various processes by the assessee. According to the Revenue, the tensile steel strappings assumed the characteristics of a different article. It was contended that cold rolled steel strips fall under sub-heading

7211.31, but when steel strappings were made out of cold rolled steel strips, it merited classification under sub-heading 7308.90 as "other articles of steel".

Therefore, the duty of excise was leviable at 15% ad valorem and an amount of Rs. 1,13,82,247/- should have been recovered from the assessee as mentioned in the show cause notice.

3.1 When the matter was heard by the Tribunal, there was difference of opinion among the Members. The learned Member (Judicial) thought it proper to set aside the impugned order and remitted the matter for de novo consideration. The Vice-President, however, was of the view that the goods were classifiable under sub-heading 7308.90. The Member (Technical) agreed with the learned Vice-President holding that the goods were excisable and classifiable under 7308.90. The appeal was, therefore, allowed by the majority order.

4. The Supreme Court noticing the nature of controversy observed that, while the majority of the Appellate Tribunal classified the box strappings under sub-heading 73.08 as "articles of iron and steel", none of the members took into consideration the question as to whether the demand made by the Revenue was barred by limitation. In view of the amendment in Section 11A of the said Act, which was given retrospective effect from 27-12-85, the appellants had questioned the vires of the said provisions and the Supreme Court, for the reasons given in the judgment, held that Section 11A of the said Act as amended was a valid piece of legislation. Having answered the reference made to the Larger Bench, the Supreme Court was of the opinion that in the peculiar facts and circumstances of the case, it need not to go into the question as to whether the processes undertaken by the appellant would amount to manufacture or whether the classification of goods under sub-heading 7308.90 was correct, in view of the fact that the question as regard limitation and availability of Modvat has not been considered. As regards the question of classification, it was argued before the Supreme Court that "box strappings" were classifiable under sub-heading 7211.31 as "strips" only and not under sub-heading 7308.90. Even after the processes were undertaken for the end product, the box strappings, remained as "strips". It was argued that the Heading 73.08 covers "other articles of iron and steel" in

individual pieces like bottom steel, nails, rivets, ranges, etc., which could not be equated with the product in question i.e. box strappings, which were in running length in coil form and not individual pieces. It was also argued that the box strappings were considered as cold rolled strips under IS:5872-1973, and were, therefore, not classifiable under sub-heading 7308.90. In this context, the Supreme Court observed that the Tribunal was bound to take into consideration the contention of the appellant that Rule 9(2) cited in the show cause notice was not applicable and a finding of fact was required to be arrived at, as to whether the extended period of limitation for issuing such notice under Section 11A of the Act, which would depend upon the question as to whether such levy was due to any act of fraud, collusion, wilful misstatement or suppression of facts, may be invoked or not. It was held that the Tribunal had committed a manifest error in not determining the question of limitation, which involved a question of jurisdiction. Moreover, even if there was short levy, which was to be recovered, the appellant was entitled to raise a question that he is entitled to ad-just the duty upon taking Modvat credit of the duty paid on cold rolled steel strips. The matter was thus remitted to this Tribunal for fresh consideration in accordance with law and in the light of the observations made in its judgment by the Supreme Court.

5. The learned Authorised Representative for the Department argued that the article manufactured by the assessee viz. box strappings was universally known as a distinct product having a specific use. He submitted that the cold rolled strips by themselves and without the process undertaken by the assessee could not have been used as box strappings. He pointed out the various processes undertaken by the assessee for bringing about the product, which, according to him, was distinct, by virtue of its having the higher tensile strength that came about by the process of heat treatment. He submitted that the box strappings were distinct article. According to him, even a product continuous in length such as box strappings made from cold rolled strips would be an article.

5.1 In support of his contentions, the learned Authorised Representative for the Department placed reliance on the decision of the Supreme Court in Collector of Central Excise, Meerut v. Kapri International (P) Ltd. cutting the cotton fabrics from running length into small pieces brings into existence new commodities like bed

sheets, bed spreads, table-cloths etc. which had a definite commercial identity in the market, and hence it was also dutiable under the very same tariff item.

He also relied upon the decision of the Supreme Court in *Laminated Packings (P) Ltd. v. CCE* in which it was held that by the process of lamination of kraft papers with Polyethylene, different goods came into being and the laminated kraft paper was distinct, separate and different identifiable goods known in the market as such from the kraft paper and, therefore, it was liable to Excise duty. It was held that the contention that duty paid kraft paper and the laminated kraft paper belong to the same tariff entry was not relevant because both of them were different identifiable goods known as such in the market. However, if duty had been paid on the kraft paper then the benefit of credit for the duty paid would be available to the manufacturer under Rule 56A of the Central Excise Rules, 1944. Reliance was also placed on the decision of the Supreme Court in *Empire, Industries Ltd. and Ors. v. Union of India and Ors.* for the proposition that to constitute manufacture, it is not necessary that one should absolutely make out a new thing, because, it is well settled that one cannot absolutely make a thing by hand in the sense that nobody can create matter by hand; it is the transformation of a matter into something else and that something else is question of degree, whether that something else is a different commercial commodity having its distinct character, use and name and commercially known as such. In other words, if by application of labour and skill an object is transformed to the extent that it is commercially known differently, it will suffice to say that manufacture has taken place for the purpose of Central Excise. The degrees of transformation and labour and skill spent are irrelevant. The learned Departmental Representative also relied upon Encarta Reference Library 2005 on the subject of steel strips for pointing out various processes involved in increasing the tensile strength of the steel products.

6. The learned Counsel appearing for the respondent-assessee submitted that the Revenue had already raised the issue that box strappings were classifiable under the residuary Entry No. 68 of the then existing Tariff and after considering the explanation given by the assessee, it was decided that the product was steel strips under Item No. 26AA (iii) as it stood prior to 1st August, 1983. He submitted that even after 1st August, 1983 and before 26th February, 1986, the classification

continued to be the same under Item No. 25 relating to Iron and Steel, and products thereof, and the item of "strips" was covered under Serial No. 12 thereunder. From 1st March, 1986, the item was covered under Chapter Heading 72.11 viz. "hoops, strips and skelp of iron or steel, whether galvanised or not". Cold rolled strips were specifically mentioned in sub-heading 7211.31 for which duty was payable at Rs. 715/- per tonne. He submitted that the expression "strips" was defined in Chapter Note (xiv) of Chapter 72, as: hot or cold rolled products, rolled approximately in rectangular cross-section, of thickness usually 10 millimeters and below, with milled, rolled, trimmed or sheared edges and supplied in coil or flattened coil (straight length) form but excludes hoop and skelp. He pointed out that the goods covered under Chapter 72 were described as products in the chapter notes and not as articles of iron and steel. He, therefore, submitted that there was no scope for treating "box strappings", which were cold rolled strips as any article falling under Chapter 73. Pointing out from sub-headings of Chapter 73, the nature of articles which were included thereunder, he argued that, these were all finished articles for independent use as such articles, unlike the cold rolled strips, which were a steel product, other than an article of the nature covered by Chapter 73.

Relying upon the IS Standards, the learned Counsel pointed out that cold rolled steel strips" for which the standards were prescribed were known as "box strappings". The learned Counsel argued that "box strappings" were a type of a cold rolled strips and, therefore, they necessarily fall under sub-heading 7211.31 and cannot be classified under any other heading in view of the said specific entry. The learned Counsel also submitted that there was no manufacturing process involved, because, the process of slitting, waxing, painting, heating, etc. did not convert the cold rolled strips into any different article as was also clear from the Indian Standard specifications in respect of cold rolled steels strips. He submitted that the process involved did not bring about any article of the nature that would fall under Chapter 73 and box strappings, which do not loose the character of being cold rolled strips, are not the goods of the type of the articles covered under Chapter 73. He argued that the residuary item "other" would be relevant only in the context of the articles which stand in the company of other articles enumerated in Chapter 73. He submitted that the items falling under the residuary item "other"

would draw colour from the nature of other articles already specified in Chapter 73 and applying the doctrine of ejusdem generis, "box strappings" can not be classified as an article falling in that chapter.

6.1 The learned Counsel relied upon the following decisions in support of his contentions :Shyam Oil Cake Ltd. v. CCE, Jaipur that the Supreme Court held that, even after refining of edible vegetable oil, it remains edible vegetable oil, and there was no manufacture. The Supreme Court referred to its earlier decisions in which it was held that the drawing of wire from wire rods did not amount to manufacture [Collector of Central Excise v. Technoweld IndustriesMetlex (I) Pvt. Ltd. v. CCE, New Delhi after cutting of marble it remained marble and there was no manufacture [Aman Marble Industries Pvt. Ltd. v. CCE, Jaipur].Aldec Corporation v. CCE, Hyderabad-III out that in a similar case, in the context of slitting, rerolling, Aluminium sheets into strips and painting of strips, it was held that conversion of sheets into sheets of lesser thickness and cutting the sheets into strips and painting the strips did not bring into existence a new product known in the market with distinct character and use, and the product Aluminium strip remained sheets under Heading 7606. It was held that every transformation does not amount to manufacture and that, the process involved did not bring into existence a distinctly identifiable new product. The Tribunal also held that the Aluminium strips could not be classified under Chapter sub-heading 76.16, which was for other articles of Aluminium like nails, tacks, staples, screws, bolts, nuts, etc.

7. The show cause notice dated 8th April, 1987 was issued on the assessee for having removed from the factory at Rudraram, a quantity of 3384.824 MTs of tensile steel strappings (packaging system), valued at Rs. 7,58,81,650.36 during the period from 1-3-86 to 19-2-87 and also in respect of steel strappings weighing 342.579 MTs detained under a Panchnama on 19th February, 1987, valued at Rs. 38 Lakhs. According to the Revenue, all steel strappings were excisable/classifiable under Chapter sub-heading 7308.90. At the relevant time, such notice was to be issued within six months from the "relevant date" which would be the date on which the duty of excise was not levied or paid, except in cases falling under the proviso by which extended time limit was prescribed in

cases of fraud, collusion, wilful misstatement or suppression of facts, or contravention of any provisions of the act or the rules made thereunder with an intent to evade payment of duty. It appears from the record of the present case, that from very beginning, the nature of the manufacturing process undertaken by the assessee was known to the Department. In fact, the Department had, as far back as on 25th June, 1983, in their communication addressed to the assessee, while describing the process of heat treatment, painting, waxing etc.

on strips for making box strappings, asserted that the cold rolled steel strappings after such process cannot be classified under the Item 26AA and that the product was classifiable under the residuary Tariff Item No. 68. It appears that thereafter, on July, 1986, the assessee explained that the processes of heat treatment, painting, waxing, etc.

did not bring about a new product and the final product continued to remain cold rolled steel strips. The assessee relied upon the decision of the Government of India in Revision No. 1623 of 1977 rendered on 20-8-1977 [Bralco Metal Industries Pvt. Ltd. reported in 1981 (8) E.L.T. 502 (GOI)] in which it was held that the process of converting strips of small size from larger strips did not amount to manufacture so as to bring into existence a new product. It also relied upon the decision in Universal Box Strapping and Engineering Works reported in 1982 (10) E.L.T. 581A (GOI), in which the Government of India held that cutting of cold rolled strips of lower dimensions from the cold rolled strips of higher dimensions was not manufacture. The assessee requested the Revenue to confirm their view point that cold rolled steel strappings were classifiable under Item 26AA (iii), as it existed prior to 1-8-83: (iii) "Flats, skelp and strips". It appears that thereafter in response to the letter of the assessee dated 2nd July, 1983, the Asstt. Collector, taking note of the fact that when cold rolled strips were cut into small sizes and subjected to heat treatment to remove impurities in the strips, and painted and waxed to prevent corrosion, are rolled into coils in a continuous process, which were marketed as "box strappings", held that the product cold rolled strips known as box strappings continued to remain cold rolled strips under the Tariff Item No. 26AA (iii), and there was no further duty liability. It is thus clear from the correspondence between the assessee and the revenue that the nature of the product and the

processes involved for making "box strappings" were all known to the Department. This was, therefore, not a case of any fraud or wilful misstatement or suppression of facts or contravention of the Act or the Rules with an intent to evade payment of duty. There was, therefore, no scope for invoking the extended period of limitation of five years for recovery of the duties not levied or not paid in respect of the said product. The show cause notice, which was issued on 8th April, 1987 was in respect of the period from 1-3-1986 to 19-2-1987 during which the Revenue found that 3384.825 MTs of tensile steel strips valued at Rs. 7,58,81,650.36 were removed and on 19th Feb., 1987, steel strappings weighing 342.579 MTs valued at Rs. 38 Lacs were detained. On the basis of the undertaking dated 23rd Feb., 1987, the detained goods were released. The period of six months that could be covered under the notice given on 8th April, 1987 would be from the relevant date to 19-2-87. The show cause notice, therefore, is valid and operative for the said period and not any period earlier than the relevant date which according to the learned Counsel would be 1-10-1987.

8. The crucial question that arises for consideration is whether the making of "box strappings" amounts to manufacture and whether the product known as "box strappings", which is made of cold rolled steel strips falls under sub-heading 7308.90 as asserted by the Revenue or under sub-heading 7211.31 as claimed by the assessee. The relevant sub-headings 7211.31 and 7208.90 read as under: "Heading No. Description Rate of Duty Chapter 72 Iron and Steel 7211.31 Cold rolled strips Rs. 715 per tonne.

Chapter 73 Articles of iron and steel 8.1 As per the literature of the product in question submitted by the assessee, the assessee manufactured tensile steel strappings of two basic types. Apex and Magnus. The description of the product given by the assessee is reproduced in paragraph 9 of the show cause notice as well as in paragraph 10 of the order-in-original and it reads as under : "Strapping : We manufacture Tensile Steel Strapping of two basic types. Apex and Magnus. Apex is manufactured to meet the requirements of most standard packaging applications. Magnus is a specially heat treated strapping with a unique combination of high tensile strength, high elongation and high ductility. For each type, there are variety of sizes and finishes which match the specific requirements

of an application".

8.2 The British Tensional Strapping Association in its publication "An Introduction to Tensional Strapping", which was referred to in Para 6 of the show cause notice, has described steel strappings, by stating that, "in its most familiar form steel strapping is similar in appearance to steel strip of flat cross-section and is often referred to as packaging strap, steel banding, tensional steel strapping or, simply, steel strapping". It appears that steel strapping requires a specialized production process as is clear from the following excerpt from the said publication : "Any initial impression of close similarity between general purpose steel strip and steel banding is superficial and is soon dispelled on closer examination. Steel strip is usually a semi-finished raw material used for consumption in a manufacturing process. In contrast, steel banding requires specialized production plant, the end product being purpose made to meet industry's diverse and varied needs. The main ingredient in these requirements is a product strong enough to do the job in hand." 8.3 The Indian Standard specifications for "cold rolled steel strips (box strapping)", (prescribed under the provisions of the Indian Standards institution (Certification Marks) Act and the Rules and Regulations made thereunder), which are based on the manufacturing and trade practices followed in the country and the field concerned, were prescribed for the said product initially in 1973. These standards covered "the requirements for two grades of cold rolled strips of nominal thickness from 0.35 to 1.2 mm and width between 9.5 and 40 mm., known as box strappings". This was extended to three grades, and as per the Second Revision, the standard covers the requirements for three grades of cold rolled steel strips (tensional steel strappings) for general packaging purposes, which are known as box strappings.

(18:5872:1990, Para 11 of the Second Revision).

8.4 The Indian Standard Specification for the said product indicates that cold rolled strips is a genus of which three grades known as 'box strappings' were covered under the specification. The Indian Standard relating to supply of material for the three grades of cold rolled strips known as box strappings, are indicated in Paragraph 3.1, provides that the "general requirements relating to the supply of

cold rolled steel strips shall conform to IS 8910:1978". The chemical composition, permissible variations in cases of product analysis, tensile test, reverse bend, test, etc. are prescribed in detail for the product known as "box strappings". It is obvious that all cold rolled steel strips are not box strappings and only certain grades of cold rolled steel strips are known as box strappings and in respect of which, standards are prescribed as per the IS Specification 5872:1990.

8.5 Steel strapping is used to secure, to close, to unitise, or to strengthen packages or to reduce their volumes. It is applied under tension by hand tools or automatic machines. Basically, there are four different types of strappings for industrial packaging applications: high strength steel strapping, regular duty steel strapping, polyester plastic strapping and polypropylene plastic strapping. Steel strapping is produced from cold rolled steel strip and is further processed to meet the requirements of its intended applications. For use in heavy duty applications, steel strapping is manufactured from steel strip with a high proportion of manganese which undergoes special heat treatment. The majority of steel strapping however, is used in regular duty applications, which do not call for special requirements as to tensile strength or break strength, (see, EUR-Lex-31998D0666-EN-98/666/EC Commission decision of 6th May, 1998 - official - Journal L 316, 25/11/1998- P. 33-47).

9. It is clear from the record that the processes undertaken by the assessee for making steel strips known as "box strappings" from cold rolled steel strips are not mere processes of slitting or cutting the strips or simply painting them. The processes, which are disclosed, also include heat treatment. Though individual processes like cutting marble may not amount to manufacture, when all the processes are cumulatively taken into consideration, and such multiple processes bring about a distinct product, they would amount to manufacture for the purpose of the Excise Tariff. Box strappings manufactured by the assessee are the products in which cold, rolled steel strips are used as a raw material and converted into a different product for the purpose of its use in the strapping market. The manufacturing process undertaken by the assessee results in cold rolled steel strips of a different variety possessing characteristics of box strappings which in their raw state, they did not possess. Strapping products can be distinguished by

the type of material and certain physical and mechanical properties, in particular their minimum break strength, their tensile strength their elongation, and impact resistance. The minimum break strength designates the force (load) that can be applied to the strapping material without inducing fracture. The tensile strength corresponds to the maximum strength that can be sustained by a structure in tension. The elongation is the relative change in length caused by tensional stress. The impact resistance designates the energy (stress impact) which can be imposed from the initial tension up to a pre-selected portion of the minimum break strength. The totality of the processes undertaken by the assessee on the raw material i.e. cold rolled steel strips bring about a product adapted to a particular use viz. steel strappings or box strappings which has enhanced characteristics and a different utility and are widely known and used in the strapping market for industrial packaging applications. We are, therefore, of the view that the cold rolled steel strips were used only as a raw material by the assessee who manufactured from them, tensile steel strappings known as "box strappings" in respect of which Indian Standards Specification is prescribed and which was a different product from the raw material from which it was made.

10. Having held that making of box strappings by the assessee involved a manufacturing process, the question still remains whether the product known as "box strappings" would fall in Chapter sub-heading 7308.90 as asserted by the Revenue or continue to remain under the same sub-heading 7211.31 - "cold rolled steel strips", as contended by the assessee in its reply to the show cause notice as also before the Supreme Court and now before us. We have, therefore, to examine whether the cold rolled steel strips, which are adapted by manufacturing process for use as box strappings, can be said to be an article falling under Chapter 73, more particularly under the residuary item "other" under sub-heading 7308.90 so as to merit levy of duty at the rate of 15%. As noted herein-above, the expression "strips" is defined in Note (xiv) of Chapter 72, and that is to be read in the context of the word 'strips' wherever it occurs in the sub-headings of that Chapter. Box strappings, though a different product with a special utility in the context of packaging industry, nonetheless, continues to remain under the category of strips because, as noted above, the Indian Standards Specification 5872:1990, "covers the requirements for three grades of cold rolled steel strips

(tensional strappings) for general packaging purposes - known as box strappings". Therefore, box strappings are strips of a particular variety useful for industrial packaging applications. Strips are hot or cold rolled products. The cold rolled steel strips processed for their use as tensile steel strappings do not convert into any article of the nature covered by Chapter 73. Though notes of Chapter 72 shall, as far as they may, apply also to Chapter 73, the word "strips" does not occur in Chapter 73 in any of the sub-headings and, therefore, the meaning given to that expression in Chapter 72 has no application in the context of any of the articles covered under Chapter 73. On going through the description of goods covered under Chapter 73, they are : sheet piling of iron or steel, railway or tramway track construction material of iron or steel, tubes and pipes and blanks, therefor of iron or steel, rain water pipes and their fittings made from sheets, plates or universal plates of iron or steel, fittings for tubes and pipes (other than fittings for rain water pipes) of iron and steel, wire ropes and castings of iron or steel. The item "other articles of iron or steel" appears at Heading 73.08 and the articles covered by it are such as : bottom stools, chains, nails, rivets, sewing needles, springs, stoves, sanitaryware, etc. of iron and steel. Under this sub-heading, "Other articles of iron or steel", at the end occurs the residuary item "Other" under sub-heading 7308.90, which obviously has to be read in the light of the nature of the articles enumerated under Heading 73.08. This residuary item, "other" under sub-heading 7308.90 cannot be interjected in Chapter 72 so as to include any product of cold rolled steel strips. Chapter 72 already covers the product of cold rolled steel strips under sub-heading 7211.31 and unlike hot rolled strips, in respect of which a distinction is made for hot/cold rolled steel strips exceeding 5 mm. in thickness and other hot rolled strips, there is no distinction made in respect of cold rolled strips. Moreover, under the Heading 72.11, "hoops, strips and skelp of iron or steel, whether galvanised or not", there is no residuary subheading "other" and by no process of interpretation can the residuary subheading "other" occurring under Heading 73.08 in Chapter 73 be read under Heading 72.11 of Chapter 72. Even apart from this, by its own interpretation of the residuary sub-heading 7308.90 "other", it will have to be read as drawing its colour from the nature of articles enumerated under Heading 73.08, and therefore it cannot cover - box strapping, which clearly is a type of cold rolled steel strip falling in sub-heading 7211.31 though involving a

manufacturing process on the cold rolled steel strips which are thereby adapted to a particular use by certain processes, which give them higher tensile strength so as to become suitable for their use as box strappings. We are, therefore, of the view that box strappings manufactured by the assessee in respect of which the show cause notice has been issued, cannot be classified under sub-heading 7308.90 as they are covered under sub-heading 7211.31.

11. The contention regarding entitlement of the assessee to get the claim of Modvat credit would now arise, in view of our above findings.

There is no dispute over proposition that the assessee will be entitled to claim Modvat credit as per the Rules in respect of the cold rolled steel strips used as raw material for manufacturing the box strappings in the period in question. The learned Authorised Representative for the Department also states that Modvat credit will be available if proper evidence is adduced. The Modvat credit as may be admissible under the rules will be worked out by the adjudicating authority.

12. For the foregoing reasons, we set aside the impugned order dated 16-8-88 of the Collector of Central Excise, Hyderabad and remit the matter to him for calculation and recovery of the excise duty payable by the respondent-assessee for the goods removed during the period of six months from the relevant date till 19th February, 1987 in accordance with law and in the light of observations made in this judgment.

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