

Bansal Mechanical Works Limited Vs. Inspector of Entry Tax, Belur

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Court : Sales Tax Tribunal STT West Bengal

Decided On : Mar-27-1996

Reported in : (2003)133STC497Tribunal

Judge : I Ray, S Mukherjee, M K Gupta

Appellant : Bansal Mechanical Works Limited

Respondent : inspector of Entry Tax, Belur

Judgement :

1. In this application under Section 8 of the West Bengal Taxation Tribunal Act, 1987, the applicant has prayed for a declaration that no tax under the Taxes on Entry of Goods into the Calcutta Metropolitan Area Act, 1972 (in short, "the Entry Tax Act") is payable on H.R. coil and skelp in coil at the time of import into Calcutta Metropolitan Area. There is an alternative prayer for a declaration to the effect that H.R. coil and skelp in coil are sheet in coil form and are liable to tax under the Entry Tax Act at Rs. 10 per metric tonne (p.m.t.) and that they are not goods under item No. 53(d)(iii) of the Schedule to the Entry Tax Act. They have also prayed for an order quashing the order of assessment dated December 23, 1994 passed by the respondent No. 1 levying tax on skelp in coil under item 53(d)(iii) of the Schedule to the Entry Tax Act. The case of the applicant is as follows : 2. The applicant carries on the business of manufacturing pipe at its factory situated in the State of West Bengal and for the purpose of manufacturing pipe, the applicant purchases hot rolled coil from Steel Authority of India Limited. The material is despatched to the applicant by M/s. Steel Authority of India Limited

from its Bokaro Steel Plant.

The applicant was given to understand by the authorities under the Entry Tax Act that the said goods were exigible to tax under the Entry Tax Act as iron and steel goods at Rs. 10 p.m.t. However, the said H.R.coil is not a specified goods under the Entry Tax Act. The applicant however, paid the tax under the Entry Tax Act on H.R. coil at Rs. 10 p.m.t. without prejudice to its rights and contentions. Such assessment continued up to August 4, 1994. However, on October 26, 1994, the applicant imported H.R. coil from M/s. Steel Authority of India Limited when, for the first time, he was informed by the respondent No. 1 that tax on H.R. coil would be levied at one per cent ad valorem. The petitioner protested against the said assessment order but in order to avoid demurrage paid the amount demanded without prejudice to his rights and contentions. Thereafter on December 23, 1994, the applicant again imported skelp in coil from Bokaro Steel Plant of M/s. Steel Authority of India Limited. Once again, the respondent demanded tax at one per cent ad valorem. At the time of making the assessment, the applicant protested before the respondent No. 1 by producing the earlier assessment order wherein tax was charged at Rs. 10 p.m.t. and also contended that no tax can be charged on skelp in coil as the same is not a specified goods under the Entry Tax Act. It was further contended that "skelp in coil is nothing but H.R. coil. H.R. coil is an iron sheet with wider width and more thickness and skelp in coil is an iron sheet with narrow width and low thickness". However, these contentions were not accepted by the respondent No. 1 who directed that tax had to be paid at one per cent ad valorem on skelp in coil. The applicant again paid the tax under protest.

3. The said purported order dated December 23, 1994 passed by the respondent No. 1 is bad and illegal. No tax can be imposed on H.R. coil and/or skelp in coil as the same is not a specified goods under the Entry Tax Act. H.R. coil and skelp in coil are nothing but iron sheet in coil form. Iron sheet of narrow size with low thickness is called skelp and when the said skelp is in coil form it is known as skelp in coil form. Similarly, iron sheet of larger width and greater thickness is called sheet and when the said sheet is in coil form it is known as H.R. coil. Both skelp in coil and H.R. coil are directly iron and steel goods and not a product of iron and steel goods. Since iron and steel goods are clearly described in the

Schedule to the Entry Tax Act and since skelp in coil and H.R. coil have not been mentioned as iron and steel goods in the Schedule, no tax under the Entry Tax Act can be charged on them. Even if it is assumed that H.R. coil and skelp in coil are iron sheet and taxable as iron and steel goods as per the Schedule to the Entry Tax Act, tax cannot be charged on these items at one per cent ad valorem since sheet is chargeable to tax at Rs. 10 p.m.t.

Hence, the actions of the respondent No. 1 in assessing and realising tax at one per cent ad valorem on such products is without jurisdiction and bad in law.

4. The respondent No. 1 has charged tax on H.R. coil and skelp in coil by treating the same under item No. 53(d)(iii) of the Schedule to the Entry Tax Act which relates to hoops and strips. The goods, namely, hoops and strips cannot be equated with H.R. coil and skelp in coil.

Strips and sheet are completely different items and it is well-known that pipe is manufactured out of sheet. Therefore, it cannot be said that H.R. coil and skelp in coil fall within item No. 53(d)(iii) of the Schedule to the Entry Tax Act. The petitioner therefore has approached this Tribunal against the imposition of taxes on H.R. coil and skelp in coil at one per cent ad valorem.

5. The respondents have opposed the application by filing an affidavit-in-opposition and their submission is that hot rolled coil or H.R. coil is nothing but strips within the meaning of serial No.53(d)(iii) of the Schedule to the Entry Tax Act. Both H.R. coil and skelp in coil are nothing but strips of iron and steel and entry tax was collected from the applicant in accordance with law in terms of serial No. 53(d)(iii) of the Schedule to the Entry Tax Act. The Steel Authority of India Limited, Central Marketing Organisation mentions in their commercial literature that hot rolled coils are flat products rolled from slabs in rectangular cross-section in coil form and skelp also has been admitted to be a narrow "strip" which is produced from well soaked slabs. Further, it would appear from the Excise Tariff that "strip" includes hot rolled exceeding 5 mm in thickness under heading No. 7211.52 and "skelp" is covered by Heading No. 7211.60. From this it will be seen that "strips" include skelp. They have also referred to the Explanation (xiv) under item No. 25(16) of the Schedule I appended to Central Excises and Salt Act, 1944

which reads as follows : "Strips" means hot or cold rolled products, rolled approximately in rectangular cross-section of thickness usually 10 millimetres and below with mill, rolled, trimmed or sheared edges and supplied in coil or flattened coil (straight length) form but excludes hoop and skelp.

Therefore, both skelp in coil and H.R. coil are nothing but strips of iron and steel within the meaning of serial No. 53(d)(iii) of the Schedule to the Entry Tax Act.

6. In their affidavit-in-reply, the applicants have reiterated their earlier submissions and have also emphasised that the definition of "strips" as quoted from the Central Excises and Salt Act, 1944 is not at all applicable in the present case. The materials actually imported by the petitioner is iron sheet in coil form but not iron strips as alleged by the respondents. The invoices on the basis of which tax has been levied show that the imported materials are nothing but skelp in coil form and iron sheet in coil form. No case has been made out by the respondents that the goods imported are strips in coil form. In case of iron sheet in coil form thickness ranges between 3 mm to 5 mm and width ranges between 1,000 mm to 1,500 mm. In case of skelp coil the thickness ranges between 2.5 mm to 3.8 mm with width varying from 147 mm to 234 mm. The invoices on the basis of which the impugned assessments were made would go to show that the width of the product was between 1,000 mm and 1,500 mm and the thickness was between 2 mm to 5 mm. Therefore, it cannot be said that the goods in question on which tax was charged was strips in coil form. The definition of Central Excises and Salt Act, 1944 cannot be applied in the present case of the applicant.

7. Mr. M.L. Bhattacharya, learned advocate for the applicant argued that the material imported by the applicant was hot rolled coil and skelp in coil neither of which has been specified in the Schedule to the Entry Tax Act. Item 53 is the item in the Schedule referring to iron and steel items. Hence, if the material is to be considered to be exigible to tax under the Entry Tax Act, then it must be specified in item 53 of the Schedule. A perusal of item 53 of the Schedule will show that H.R. coil and skelp in coil are not specified at all and therefore they are not specified goods. Hence, no entry tax is payable on the material imported by the applicant. In this connection, Mr.

Bhattacharya referred to the submission made in the affidavit-in-opposition justifying treatment of H.R. coil and skelp in coil as nothing but strips of iron and steel and their reference to the Explanation (xiv) under item No. 25(16) of the Schedule I appended to Central Excises and Salt Act, 1944 and stated that the respondents cannot borrow the meaning of any term given in another Act for the purposes of explaining the meaning of the same term in the Entry Tax Act. This is all the more obvious in the present case because the Central Excises and Salt Act, 1944 is a Central Act and the Entry Tax Act is a State Act which has been passed by a different Legislature.

Further, it would appear that even under the Excise Tariff, hot rolled strips should exceed 5mm in thickness and there is no reference to any material that may have a smaller thickness. The invoice-cum-despatch advice appended to the affidavit-in-reply, Mr. Bhattacharya argued, showed a large number of consignments which had thickness less than 5mm and therefore reliance on the part of the respondents to the Central Excise Tariff is not of any help to the respondents. Mr. Bhattacharya further argued that item 53 of the Schedule to the Entry Tax Act refers to iron, steel and their alloys. Items 53(a) and 53(b) of the said Schedule refer to iron and steel materials and not to products of iron and steel which have been provided in item 53(d) of the Schedule. Skelp which has been imported by the applicant is a type of iron and steel material and not a product of iron and steel. In support of his contention, he referred to Section 14(iv) of the Central Sales Tax Act, 1956 where it would be seen that sheets, skelp, etc., are considered to be iron and steel as the entry starts with the statement "iron and steel, that is to say- (vi) sheets, hoops, strips and skelp, both black and galvanised, hot and cold rolled in straight lengths and in coil form". The meaning of the term "that is to say" has been clearly indicated in [1976] 37 STC 319 (SC) in the case of Pyare Lal Malhotra and from the observations in the judgment it would be clear that sheets and skelp are nothing but iron and steel. They are not products of iron and steel and therefore not exigible to tax under item 53(d) of the Schedule to the Entry Tax Act. Mr. Bhattacharya stated that since no definition of strips or hoops has been given in the Entry Tax Act, popular meaning is to be adopted. In common parlance, skelp and strips are two distinct commercial commodities. Therefore, there is no reference to the imported materials, viz., H.R. coils and

skelp in coil in the Schedule to the Entry Tax Act and hence they are not exigible to tax. He argued that even if it is held that the items are exigible to tax then also they should be considered to belong to the category of iron and steel and not products of iron and steel and therefore they can be at the most charged to tax at Rs. 10 p.m.t.

8. Mr. S.N. Rose, learned advocate for the respondents argued that hot rolled coil and skelp in coil were nothing but strips within the meaning of serial No. 53(d)(iii) of the Schedule to the Entry Tax Act.

The Central Marketing Organisation of the Steel Authority of India Limited (SAIL) has stated in their marketing literature "Hot rolled coils and skelp from SAIL" that hot rolled coils are flat products rolled from slabs in rectangular cross-section in coil form and "skelp" is a narrow "strip" which is produced from well-soaked slabs. Since strip has been categorically provided as an item in the Schedule to the Entry Tax Act, no separate mention need be present regarding skelp which is nothing but narrow strip. He referred in this connection to the decision of the Calcutta High Court reported in State of West Bengal v. Nitai Mohan Saha [1989] 74 STC 221 where it has been held that if genus is specified, species need not be specified. In the instant case since "strip" has been clearly specified "skelp" which is narrow strip need not be separately specified.

9. Mr. M.L. Bhattacharya in his argument in reply stated that the decision of State of West Bengal v. Nitai Mohan Saha [1989] 74 STC 221 (Cal) was not applicable in the instant case as the facts are completely different. Regarding the contention of the respondents that H.R. coil is nothing but strip, Mr. Bhattacharya argued that the commercial literature of SAIL itself show that cold rolled coils and sheets have been treated to be the same as there are numerous references to cold rolled coils/sheets. Similarly, hot rolled coil also should be considered to be equivalent to sheets. In this connection, he mentioned that the revenue authorities have themselves treated H.R.coils to be different from strips as they have imposed entry tax at Rs. 10 p.m.t. in respect of another consignment which was imported on December 17, 1994 (annexure Y to affidavit-in-reply).

Therefore, the argument of the respondent that H.R. coil is nothing but strip has not been consistently followed by the revenue authorities themselves.

10. It is an admitted position that hot rolled coil and skelp in coil have been imported by the applicant into Calcutta Metropolitan Area.

The applicant's case is that they have imported hot rolled coil and skelp in coil from M/s. Steel Authority of India Limited. They have annexed the invoices on which tax has been levied in their annexure marked "x" to the affidavit-in-reply. On going through the annexures, it is found that there are two groups of invoices. The first group comprises invoices issued by the Durgapur Steel Plant of Steel Authority of India Limited. In these invoices, the description of the material is skelp and the IS Standard referred to is IS-10748/84-GR-1.

The other group of invoices relates to despatches made from Bokaro Steel Plant of Steel Authority of India Limited. Here the product has been mentioned to be H.R. strips up to 5 mm in some cases and H.R. strips above 5 mm in some other cases. The IS specification referred to is IS-10748 Grade I Semi Killed. There is a reference in the Bokaro Steel Plant invoices also to the material being H.R. coil.

11. The argument that hot rolled coil and skelp in coil are not specified in the Schedule to the Entry Tax Act and therefore, are not exigible to tax under the Entry Tax Act cannot be examined without appreciating the meaning of the different relevant entries in the Schedule and the meaning of the different terms used therein. It is true, as has been argued on behalf of the applicant, that hot rolled coil and skelp in coil are not defined in the Entry Tax Act ; and therefore, the popular meaning of these terms will have to be considered for the purpose of deciding upon their taxability. According to the applicant, skelp in coil and H.R. coil are nothing but iron sheet and is known as such in the trade. They have not offered any evidence in favour of their assertion. The respondents have referred to the commercial literature issued by the SAIL in support of their case and the applicant also has sought to show that such literature does not support the respondent's case.

12. While the commercial literature regarding hot rolled coil and skelp issued by SAIL is no doubt relevant regarding the appropriate meaning of the terms "hot rolled coil" and "skelp", we may also profitably examine the definitions of these terms given in the publications of the Bureau of Indian Standards. Such publications are well-known in the trade ; and therefore, the specifications and definitions given in such publications can be considered to be an authoritative indicator of the meaning of any particular term as popularly understood in the trade and connected circles. Apart from the statutory position of the Bureau of Indian Standards, it is a matter of record that these publications result from deliberations of expert groups. In such groups the various authorities of the Government of India, representatives of private sector undertakings as well as public sector undertakings and representatives of the different manufacturing associations are involved. Thus we find that in the Metal Standard Sectional Committee, SMDC1 there are representatives from Indian Tube Company Limited, Calcutta, Tata Iron and Steel Company Limited, Jamshedpur, International Nickel (India) Private Limited, Bombay, Indian Iron and Steel Company Limited, Burnpur, Indian Aluminium Company Limited, Calcutta, the Binani Metal Works Limited, Calcutta, Indian Non-ferrous Metals Manufacturers' Association, Calcutta and Institute of Indian Foundrymen, Calcutta in addition to representatives from various Central Government Departments and Organisations. Similarly, in the sub-committee for Terminology, Classification and Designation of Steels, SMDC1 : 1, we find Guest, Keen, William Limited, Howrah, Indian Tube Company Limited, Jamshedpur, the Tata Iron and Steel Company Limited, Jamshedpur, Indian Iron and Steel Company Limited, Burnpur and Mahindra UGINE Steel Company Limited, Bombay represented in the sub-committee. Therefore, the definitions given in the Indian Standards published by the Bureau of Indian Standards can be considered to be authoritative meanings of any particular term as popularly understood in the trade and connected circles.

13. H.R. coil has been defined in IS : 1956 (Part III)-1975 at serial No. 2.39 which is as follows : It is clear from the description in the invoices that the material supplied by Bokaro Steel Plant is hot rolled strip. Strip is defined at item 2.111 of IS : 1956 (Part IV)-1975 as follows : "2.111 Strip--A hot--or cold-rolled flat product and rolled approximately in rectangular cross-section of thickness usually 10 mm

and below with mill, rolled, trimmed or sheared edges and supplied in coil or flattened coil (straight length) form. Usually an arbitrary width is chosen to demarcate between narrow and wide strip. The width chosen for such demarcation varies from country to country." From this it will be evident that the materials sent by the Bokaro Steel Plant of Steel Authority of India Limited to the applicants, as per the invoices annexed by the applicant, are nothing but hot rolled strips supplied in coil form.

14. The remaining invoices which showed despatch from Durgapur Steel Plant, Durgapur mentioned that the material supplied was skelp. Skelp again has been defined in IS-1956 (Part IV)-1975 at serial No. 2.103 which is as follows : Note - Skelp is historically coined from the word 'skelping', an operation in which long narrow strip was beaten into the shape of a tube which was heated to a very high temperature and rolled, resulting in forge welding of the seam." Serial No. 2. 111 referred to in the definition of skelp has already been referred to earlier in connection with the definition of "strip".

15. Keeping in view the definitions given in the Glossary of Terms Relating to Iron and Steel issued by the Bureau of Indian Standards, we may now examine the various commercial literature issued by the Steel Authority of India Limited. As far as Bokaro Steel Plant is concerned, it has mentioned that "Bokaro HR coils are produced out of LD Converter Steel through ingot route. Ingots are soaked in the soaking pits before rolling into slabs. Slabs in the thickness range of 180-250 mm and in width up to 1,850 mm with suitable chemical composition are rolled at the requisite temperature to produce HR strips of desired property.

After passing through the scale breaker, roughing stands and finishing stands strips are cooled by water spray to achieve desired finishing and coiling temperature and finally given the shape of coils in the coilers." (portions underlined* by us). In the literature relating to Durgapur Steel Plant, it has been mentioned that "skelp, which is narrow strip, are available from Durgapur Steel Plant from continuous skelp mill. The skelp is produced from well-soaked slabs. These slabs before re-heating are scarfed with the help of scarfing torches for removal of surface defects. The heated slabs are rolled in a mill train which

consists of roughing stands and finishing stands, and then coiled in vertical coilers". (portions underlined* by us).

16. It will therefore be clear that the material despatched by Durgapur Steel Plant of Steel Authority of India Limited also was strip.

In the invoices from Bokaro as well as in the invoices from Durgapur Steel Plant the width and thickness, i.e., the cross-section of the strip is mentioned but there is no mention of the length showing that the material was not supplied in straight length but in coil form.

Therefore, in all the invoices what has been imported into Calcutta Metropolitan Area is hot rolled strip in coil form. This falls squarely under the item No. 53(d)(iii) of the Schedule to the Entry Tax Act which specifies "Hoops, strips." 17. The applicant has submitted in his affidavit-in-reply that the materials actually imported by the petitioner is iron sheet in coil form. This contention cannot be accepted in view of the definition for sheet which is contained in IS-1956 (Part IV)-1975 at serial No. 2.96 which is as follows :-- "2.96 Sheet--A hot or cold rolled flat product, rolled in rectangular section of thickness below 5mm and supplied in straight lengths. The width is at least 100 times the thickness and the edges can be milled, trimmed, sheared or flame cut. A sheet can also be obtained by cutting of strips". (portion underlined* by us).

From the meaning of the term "sheet" as given above it will be seen that "sheet" is supplied in straight lengths and therefore, sheet in coil form is a contradiction in term. Hence, the material imported by the applicant cannot be considered to be sheet of any kind. In this view of the matter what was imported by the applicant from Bokaro Steel Plant and Durgapur Steel Plant was "strip" and is therefore exigible to entry tax under item No. 53(d)(iii) of the Schedule to the Entry Tax Act.

18. The application is therefore dismissed without any order as to cost. The operation of this judgment and order is stayed for eight weeks on the oral prayer of the learned advocate for the applicant.