

**Special Steels Ltd. Vs. Cce**

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

**Decided On :** Mar-15-1995

**Reported in :** (1995)(78)ELT235TriDel

**Appellant :** Special Steels Ltd.

**Respondent :** Cce

**Judgement :**

1. This appeal arises from order-in appeal passed by the Collector (Appeals), Bombay. In this appeal, the Collector has confirmed order-in-original, and has denied the benefit of Notification No.206/63, dated 30-11-1963 as amended from time to time in respect of iron or steel products falling under Tariff Item 26AA(ia) which exempts from payment of duty provided the final products are manufactured out of other iron or steel products falling under sub-item (ia) of 26AA on which the appropriate duty of excise has already been paid. Ld.

Assistant Collector has held that in order to claim the benefit of the exemption under this notification, the assessee should produce the duty paying documents in respect of raw-material used for the manufacture of finished products. He has noted that the assessee were obtaining the raw-materials from the following sources : Out of the above-noted inputs, the assessee was able to produce duty paying documents in respect of 2130.769 MT and a quantity of 325.754 MT for the period 5-8-1983 to 29-9-1983. The Asstt. Collector granted benefit only to this extent but confirmed the demand of duty by denying the benefit of notification in respect of the quantity 12528.155 MTS on which the assessee was unable to

produce duty paying documents. The assessee has taken the stand that no proof of payment of duty is necessary for claiming the benefit of said notification. It was urged by them that steel wires can be drawn only from steel wire rods which invariably rolled from semi-finished steel and/or ingots. They had urged that these steel wire rods which were rolled by mini plants from their own billets and these plants were covered under excise procedure.

They had submitted that there were secondary manufacturers, who were known as re-rollers and who roll wire rods from steel supplied by integrated steel plants. They had submitted that re-rollers were exempted from operation of Rule 174A. They had submitted that the demands were in respect of the wire rods which they have obtained from the integrated steel plants. Therefore, the supply of such inputs are deemed to be duty paid and in this regard, they relied on the ruling rendered by the Delhi High Court in the case of Sulekh Ram & Sons as reported in 1978 (2) E.L.T. (J 525) in respect of the same notification. However, the Id. Asstt. Collector as well as Collector did not agree with the ratio of the said judgment and rejected their claim. However, the Id. Collector has held a portion of demand to be time barred in respect of the clearances made for the period from 8-4-1981 to 8-8-1981.

2. We have heard Shri R. Nambirajan, Id. Consultant for the appellant and Shri A.K. Singhal, Id. JDR for the department. Ld. Advocate submitted that this issue is no longer as this issue has now fully settled in terms of the following judgments:Ganga Steel Rerolling Mills, Raipur and Ors. v. Union of India and Ors.Capital Dyeing Co., Chandigarh v. Collector of Central Excise -1984 (17) E.L.T. 544;Collector of Central Excise v. Decent Dyeing Co. -1990 (45) E.L.T. 201; (v) Calcutta Paper Mills Manufacturing Ltd. v. Customs, Excise & Gold (Control) Appellate Tribunal and Ors. -1986 (25) E.L.T. 939; (vi) Vapson Products and Anr. v. Union of India and Ors. - 1987 (27) E.L.T. 608 (Bom.).

3. Ld. JDR reiterated the findings of the lower authorities and particularly relied on para 5 of the findings of the Collector (Appeal). Ld. Collector has disagreed with the Delhi High Court's judgment and one particular point by taking strength from the judgment of the other High Courts and has come to the conclusion that the

point is not free from doubt till such time as controversy is settled by the Apex Court.

4. We have considered the submissions made by both the sides and have perused the judgments cited before us. The Hon'ble Supreme Court in the case of Collector of Central Excise v. Decent Dyeing Co. has held in para 5 of the judgment as follows: "Excise is a duty on manufacture. The liability of payment of this duty is on the manufacturer. The language of the notification referred to hereinbefore indicates that only the duty for the time being leviable on the base yarn, if not already paid plus ten rupees per kg. was the liability. The description of manufacture was textured yarn produced out of base yarn. We are clearly of the opinion that in view of the facts and the circumstances of the case, the Tribunal was right in the view it took. In this connection, it is instructive to refer to Rule 49 of the Central Excise Rules, 1944, which deals with duty chargeable only on the removal of the goods from the factory premises or from an approved place of storage. Reference was also made before the Tribunal and our attention was also drawn to the decision of the Delhi High Court in Sulekh Ram & Sons v. Union of India and Ors. 1978 (2) E.L.T. (J 525), where under Rule 9 of the Central Excise Rules, it was held by the Delhi High Court that under excise system, no goods can be removed from the place of manufacture without first paying the excise duty, therefore, a purchaser can presume that goods are duty paid. It would be intolerable if the purchasers were required to ascertain whether excise duty had already been paid as they have no means of knowing it. It has to be borne in mind that duty of excise is primarily a duty levied on a manufacturer or a producer in respect of the commodity manufactured or produced. See the observations of the Lord Simonds in Governor General in Council v. Province of Madras (72 Indian Appeals 91). In a situation of this nature, the Delhi High Court held that the processor was in the similar position as a purchaser of the goods. In that view of the matter, we are of the opinion that the Tribunal was right in the view it took".

As can be noticed the Hon'ble Supreme Court has confirmed the ratio of the judgment rendered by the Delhi High Court in the case of Sukkh Ram & Sons and judgment of Sulekh & Sons pertained to this very notification. The Hon'ble Delhi High Court has taken a view that the goods which are procured from market are

deemed to be duty paid. The Hon'ble M.P. High Court in the case of Ganga Steel Rerolling Mills has held that the wording in the notification "has been paid" does not mean "actually paid" but only means "ought to have been paid". Court has held in the following words : "It is felt that, there was no basis for making any such distinction in application of different notifications. The words "has been paid" as used in these notifications do not mean "actually paid" but only mean "ought to have been paid". The raw materials used by the petitioners for re-rolling were not manufactured by them. The obligation to pay the appropriate amount of excise duty on the raw-materials rested on the manufacturers of those raw-materials. If the manufacturers had not paid the appropriate amount of duty the excise authorities should have recovered the duty from them. A purchaser has no control over the manufacturer in respect of his act relating to the payment of duty on the goods manufactured. Having regard to the scheme of the rules relating to payment of excise duty it is clear that the words "has been paid" as they are used in the notification do not mean actual payment of duty 1978 (2) E.L.T. (J 525) (Del.)."

"The liability to pay base stage duty on yarn arose under Tariff Item 18(i) and that liability was on the spinner of that yarn. There were cases where the spinning mills manufacturing the base yarn were further texturising the yarn also on which further duty under Item 18(ii) was payable. In order to obviate the need of having to pay the duty twice, the tariff entry as well as the exemption notification made the provision, that the spinner could pay the base duty as well as the texturising duty together at the time of the removal of texturised yarn. In view of this, plain yarn available in the market had to be regarded as having paid the base duty on its removal from the spinning mill. Therefore, from the scheme of the tariff entry and the notification there is no warrant for coming to the conclusion that the customers who purchased plain yarn from the market and processors who are simply texturing plain yarn had also to pay the base stage duty over and above the texturising surcharge even though they were not the spinners of the base yarn."

The Calcutta High Court in the case of Calcutta Paper Mills Manufacturing Co, has held in respect of duty paid character of goods - more particularly goods purchased from the market presumed to be duty paid in the following words : "Under Rule 9(1) of the Central Excise Rules, 1944, no excisable goods shall be removed from any place where they are produced, cured or manufactured until the

excise duty leviable thereon has been paid. In other words, a manufacturer has to pay duty before clearing the goods from the factory. In the instant case, no evidence was produced by the Respondent in support of the contention that the goods which were purchased from the market did not suffer duty at the time when such goods were removed by the manufacturer from the concerned factory. On the other hand, they have admitted in their counter-affidavit that the petitioner paid duty on the teleprinter paper rolls/ tapes under Item 17(1) of the Central Excise Tariff and the said base paper was purchased by the petitioner from the market.

Therefore, it is absolutely impossible for a purchaser to know whether excise duty on the manufactured goods sold to the purchasers had already been paid by the manufacturers. If the purchaser has to satisfy the excise authorities that the goods which he has purchased from the market suffers duty, it would impose a burden which no purchaser would be able to discharge 1978 (2) E.L.T. (J 525) relied upon (para 5)." 5. In view of the findings given by the Courts as noted above, the conclusion that can be drawn is that the raw-material received by the appellants from the steel manufacturers are duty paid unless the department shows to the contrary, which they have not done so in this case. In that view of the matter applying the ratio of the above judgments, we allow this appeal by setting aside the impugned order.

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