
(1979) 08 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 3554 and 3555 of 1978

Andhra Re-Rolling Works

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-08-1979

Acts Referred:

Central Excise Rules, 1944 — Rule 10, 10A, 173F, 173O, 226

Citation : (1981) 1 ECR 129D : (1979) 4 ELT 661

Hon'ble Judges : Chennakesav Reddy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Chennakesav Reddy, J.—The short question that arises in these Writ Petitions is : whether mild steel rounds manufactured out of mild steel ingots, on which excise duty has been paid, are further liable to duty under Item 26AA of the First Schedule to the Central Excises and Salt Act, 1944.

2. The material facts giving rise to the question are these : The petitioners, M/s. Andhra Re rolling Works, are a firm registered under the Indian Partnership Act, 1932. They carry on business of manufacturing mild steel rounds and flats (hereinafter referred to as "the said products") at their factory at Moosapet. The manufacture of the said products is made from duty paid steel ingots supplied by other manufacturers. On 22/23rd September, 1969, the petitioners addressed a letter to the Assistant Collector of Central Excise, Hyderabad, stating that they would like to purchase duty paid steel ingots and enquiring whether they were entitled for exemption from duty on the products made out of duty paid steel ingots. Thereafter, the petitioners purchased between 17-10-1969 and 31-12-1979 226.56 tons of duty paid steel ingots supplied by other manufacturers. According to them, the said steel ingots were broken into pieces and entered in the RG 4 register as scrap. Out of the said scrap ingots, the petitioners re-rolled 191.98 tons of mild steel rods. Thereafter, the said products were cleared from the factory on the regular gate passes

furnished by the petitioners-firm to the excise authorities. The petitioners claim that the said products are exempted from payment of duty under Notification No. 206/63, dated 30-11-1953 issued by the Government of India as amended by Notification No. 123/65, dated 14th August, 1965 under Rule 8 of the Central Excise Rules, 1944 (hereinafter referred to as "the said Rules"). Under the said Notification the product manufactured from duty paid cut or broken steel ingots are exempted from payment of duty.

3. However, the petitioners received a show cause notice on 5-9-1970 issued under Rules 10 and 10A of the said Rules calling upon the petitioners to pay the excise duty amounting to Rs. 9,599/- for the goods cleared during the period 17th October, 1969 to 31st October, 1969. On 30-9-1970 the petitioners replied suitably to the said show cause notice. The Assistant Collector of Excise, i.e., the second respondent "herein, confirmed the demand by his order dated 27-11-1979 to pay the excise duty amounting to Rs. 9,076. The appeal preferred by the petitioners to the third respondent herein was also unsuccessful. The petitioner, therefore, ultimately paid the excise duty demanded, of them.

4. The petitioners were again served with a show cause notice dated 29-3-1971 under Rule 10 of the said Rules alleging that during the period 30-12-1969 to 26-3-1970 the petitioners received 351.51 metric tons of steel ingots as scrap in form IV register and re-rolled MS. rods on the said raw material, that the said products were cleared without payment of excise duty despite the fact that they were excisable and calling upon the petitioners to show cause why the excise duty amounting to Rs. 17,575.50 ps. should not be recovered from them. The petitioners replied to the said notice and denied the liability. The second respondent by his order dated 10-4-1972 confirmed the order of demand and called upon the petitioners to pay the excise duty amounting to Rs. 17,575/-. Aggrieved against the said order, the petitioners preferred an appeal on 25th April, 1972 to the fourth respondent. The fourth respondent rejected the appeal on 2nd January, 1974. Thereafter, the petitioners filed a revision petition before the Government of India i.e., the 1st respondent herein. The 1st respondent rejected the revision application on 11th May, 1976. On 25th February, 1977 the petitioners to their shock and surprise received another show cause notice calling upon the petitioners to show cause why penalty should not be levied under Rules 9(2), 52A, 1730 and 226 of the said Rules, the said show cause notice it was alleged that during the period 17-10-1969 to 29-3-1971 the petitioners received steel ingots and entered them in Form IV register as scrap and produced mild steel rods and cleared the same without issuing gate passes in contravention of Rules 9(1), 52A and 173F. The petitioners by their letter dated 7-3-1977 replied to the said show cause notice. The third respondent by his order dated 19-11-1977 held that the petitioners had removed the said products surreptitiously and imposed a penalty of Rs 50,000/-. The petitioners have now filed this writ petition seeking to quash the order of the third respondent dated 19-11-1977 in Adjudication Order No. 134/77 and the order of the Government of India No. 850 of 1976, dated 1-5-1976 confirming the orders dated 2-1-1974

of the Appellate Collector of Central Excise and that of the Assistant Collector of Central Excise dated 10-4-1972.

5. In the counter affidavit filed on behalf of the respondents, the claim of the petitioners that the products manufactured by them from duty paid M.S. ingots are exempted from duty under Notification No. 206/63 dated 30-11-1963 as amended by Notification No. 123/65 dated 14-8-1965 is denied. It is emphatically stated that the exemption is applicable only in respect of ingots which are cut and broken in shapes similar to those described in sub-item (i) of the T.I. No. 26AA but not in respect of ingots which are not cut or broken. It is further averred that this issue was never raised or canvassed before the appellate authorities in any of the two appeals filed by the petitioners and on the other hand the petitioners expressed their readiness to pay the duty at Rs. 50/- per M.T. if allowance for wastage is granted at 15%. The only question that arises and was argued in depth and detail is whether the Notification No. 206/63 dated 30-11-1963 as amended by Notification No. 123/65 dated 14-8-1965 exempting M.S. rounds and rounds bars manufactured from duty paid M.S. ingots from payment of duty is attracted to the products manufactured by the petitioners. It is, therefore, necessary to read the Notifications.

"M.R. (D.R.) NOTFN. C. Ex. 206/63--dated 30-11-1963.

In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 and in suppression of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 131/62-Central Excise, dated the 13th June, 1962, the Central Government hereby exempts Iron or Steel Products (falling under sub-item (ia) of Item No. 26AA of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) made from any of the following materials or a combination thereof, namely : --

(i) fresh unused re-rollable scrap on which the appropriate amount of duty of excise has already been paid.

(ii) Semi-finished steel including blooms, billets, slabs, sheet bars, tin bars and hoe bars, on which the appropriate amount of duty of excise has already been paid :

(iii) old and used re-rollable scrap; from the whole of the duty of excise leviable on such products.

2. This Notification shall come into force on the first day of December, 1963."

"M.F. (D.R.) NOTFN. C. Ex. No. 123/65 -- dated 14-8-1965.

In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 206/63, Central Excise, dated the 30th November, 1963, namely : --

In the said notification, in paragraph one, after item (iii) the following item shall be and shall be deemed always to have been inserted, namely --

(iv) ingots, on which the appropriate amount of duty of excise has already been paid, cut or broken (but not rolled) in any shape resembling the shape of any of the products referred to in sub-item (i) of the said item No. 26 A A".

6. It can at once be seen from the said Notification No. 206/63 dated 30-11-1963 as amended by Notification No. 123/65 dated 14-8-1965 that iron and steel products falling under sub-item (ia) of item 26AA of the First Schedule to the Central Excises and Salt Act, 1944, made out of ingots cut or broken but not rolled on which the appropriate amount of duty, has already been paid are exempt from duty. Therefore, the conditions to be fulfilled to attract the Notification are (1) the products manufactured should fall under sub-item (ia) of item 26AA, and (2) the products should have been manufactured from ingots cut or broken but not rolled on which the appropriate amount of duty has already been paid. Item (ia) of 26AA reads as follows : --

"Bars, rods, coils, wires, joists, girders, angles, channels, tees, beams, zeds, trough, piling and all other rolled, forged or extruded shapes and sections, not specified."

7. There is no dispute that M.S. rounds manufactured by the petitioners fall under item (ia) of item 26AA. It is also not in dispute that M.S. ingots purchased by the petitioners from the manufacturers are duty paid. The only dispute is whether the products made were out of M.S. ingots broken or cut and not rolled. If the ingots are not cut or broken but rolled, then the exemption notification cannot be invoked. But the petitioners positively alleged in paragraph 5 of the Writ Petition that the steel ingots purchased by the A were broken into pieces and were entered into RG 4 register as scrap and it was out of the said scrap ingots that the petitioners re-rolled 191,98 tone of Mild Steel Rods. It is true as contended by the learned Counsel for the Respondents that the plea of exemption under the said notification was raised only for the first time before the Government of India, and not either before the Appellate Collector or before the Assistant Collector. But it is the case of the Respondents that this quantity of steel ingots was shown as scrap in RG 4 Register. In view of the said admission, I feel it difficult to accept the contention of the learned counsel for the respondents that the ingots received were not cut or broken before they were put into roller. Even though the ingots received were not cut and broken, it is sufficient if they were cut or broken in the factory before they were rolled. This view of mine finds support from a Division Bench decision of the Allahabad High Court in *Bansal Steel Sons Co. Pvt. Ltd. v. Union of India*, 1974 Tax L.R. 2439. The learned Judges observed that "the use of the words "but not rolled" makes it clear that the cutting or breaking of ingots is in the factory and has no reference to source of supply". This decision was also followed by a Division Bench of the Gujarat High Court in an un-reported decision in special Civil Application Nos. 757, 853 of 1973 and 160 and 192 of 1974, dated 2-5-1975.

8. In the result, the impugned orders are quashed and the respondents are restrained from recovering the penalty of Rs. 50,000/- from the petitioners. The Writ Petitions are accordingly allowed. There shall be no order as to costs.