(1996) 03 BOM CK 0028

In the Bombay High Court

Case No : Writ Petition No. 2963 of 1987

Crompton Greaves Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 06-03-1996

Acts Referred:

Citation : (1996) 86 ELT 205

Hon'ble Judges : M.B. Shah, J;A.V. Savant, J

Bench : Division Bench

Advocate : Shri P.D. Shah, instructed by Manilal Kher Ambalal and Co, for the Appellant; Shri H.M. Mehta and Shri V.G. Rege, for the Respondent

Judgement

A.V. Savant, J.—Heard both the learned Counsel.

2. The petitioners - Crompton Greaves Ltd. - are a company registered under the Companies Act, 1956. They manufacture - inter alia - electrical stampings, motors, fans and transformers at their factory at Kanjur Marg, Bombay. The electrical stampings were classifiable under Tariff Item No. 28A of the erstwhile First Schedule to the Central Excises & Salt Act, 1944 (for short "the Act").

3. The petitioners state that for the manufacture of the Electrical Stampings, the petitioners purchased duty paid Hot Rolled and Cold Rolled Steel Sheets. The said steel sheets are assessed to the Central Excise Duty at the rate prescribed under Tariff Item 26AA of the erstwhile First Schedule to the Act. The petitioners are availing of proforma credit of the Central Excise Duty on the above steel sheets under Notification No. 95/79, dated 1st March, 1979.

4. According to the petitioners, in the manufacture of Electrical Stampings, waste and scrap is generated at three stages :-

(i) At the stage of the cutting of the steel sheets into smaller sheets (called left overs or industrial scrap)

(ii) At the stage of the blanking operations; and

(iii) At the stage of the stamping operation.

The petitioners bifurcated the said waste and scrap generated in the manufacture of Electrical Stampings into melting steel scrap and non-melting steel scrap.

5. The petitioners cleared melting steel scrap on payment of duty at the rate of Rs. 330/- per M.T. under Notification No. 147/77 dated 18th June, 1977. The petitioners cleared non-melting steel scrap on payment of duty at the rate of Rs. 450/- per M.T. under Notification No. 55/80 dated 13th May, 1980, which is at Ex. B to the petition.

6. By three show cause notices dated 2nd March, 1983 Ex. D dated 2nd March, 1983 Ex. E and dated 7th July, 1983 Ex. F the petitioners were required to show cause to respondent No. 3 as to why Central Excise Duty on non-melting steel scrap should not be recovered at the rate of Rs. 650/- per M.T. prescribed under Serial No. 6(ii)(b) of the said Notification No. 55/80 Ex. B in respect of non-melting steel scrap. The show cause Notices alleged that the petitioners had claimed the Proforma Credit under Notification No. 95/79, dated 1st March, 1979. While duty had been correctly pain on the Steel Melting Scrap under Notification No. 147 of 1977 and also on Hot Rolled Non-melting Steel Scrap under Notification No. 55 of 1980 at the rate of Rs. 450/- per M.T., the petitioners had short-paid the excise duty on Non-melting steel scrap arising out of Gold Rolled Sheets. Hence, it was stated that the petitioners ought to have paid the duty at the rate of Rs. 650/- per M.T. under Serial No. 6(ii)(b) of the Notification No. 55/80 at Ex. B.

7. The petitioners contested the said three Show Cause Notices issued u/s 11A of the Act on the ground that they were liable to pay Central Excise Duty on the waste and scrap arising in the manufacture of the Electrical Stampings under Tariff Item No. 26 of the erstwhile first schedule to the Act and read with the Notification No. 147/1977 at the rate of Rs. 330/- per M.T. Replies to that effect were filed on 2nd May, 1983 at Ex. G and on 29th July, 1983 at Ex. H.

8. By an order dated 25th January, 1984 at Ex. I, the Assistant Collector of Central Excise rejected the contentions of the petitioners and confirmed the demand made pursuant to the said three show cause notices dated 2nd March, 1983 Ex. D, 2nd March, 1983 Ex. E and 7th July, 1983 Ex. F.

9. Being aggrieved by the said decisions dated 25th January, 1984 at Ex. I the petitioners filed an appeal u/s 35 of the Act before the Collector of Central Excise (Appeals), Bombay and also filed an Application for stay. By his order dated 25th April, 1984 at Ex. K, the Collector of Central Excise (Appeals) rejected the stay application of the petitioners. The petitioners thereafter paid duty demanded pursuant to order dated 25th January, 1984.

10. Thereafter the Collector of Central Excise by his order dated 14th July, 1986 at Exh. L rejected the appeal filed by the petitioners.

11. In the meanwhile the petitioners had filed Writ Petition No. 998 of 1984 in

this Court challenging the order dated 25th January, 1984 at Ex. I and dated 25th April, 1984 at Ex. K. However, the said Writ Petition was summarily rejected (on) 4th May, 1984. Being aggrieved by the said order of summary rejection, the petitioners had preferred Appeal No. 963 of 1984 which was admitted on 9th October, 1984. However, when the said appeal came up for final hearing on 7th August, 1987 it was allowed to be withdrawn since, in the meanwhile the Collector had passed the order on 14th July, 1986 at Ex. L dismissing the petitioners'' appeal. This Court, however, gave liberty to the petitioners to challenge the order of the Collector passed on 14th July, 1986 at Ex. L. The order passed by this Court on 7th August, 1987 in Appeal No. 963 of 1984 reads as under :

"On Mr. Gandhy''s application, the appeal is allowed to be withdrawn.

The appellants shall be at liberty to challenge the order of the Collector of Central Excise (Appeals) dated 14th July, 1986 if they are otherwise entitled to do so and the respondents will be at liberty to raise all contentions in reply.

No order as to costs."

12. Pursuant to the above, the present Writ Petition has been filed challenging the order 14th July, 1986 at Ex. L. The petitioners also seek the refund of the differential duty paid between the rates prescribed under Notification No. 147/77 i.e., to say Rs. 330/- per M.T. and duty paid at the rate of Rs. 450/- per M.T. on the non-melting steel scrap.

13. Mr. Shah, the learned Counsel for the petitioners contended that admittedly what was cleared by the petitioners was scrap. The appropriate rate of duty payable on the scrap was at the rate applicable under Tariff Item No. 26 of the erstwhile first schedule to the Act read with Notification No. 147/77. It was, therefore, contended that the levy of Excise Duty at the rate of Rs. 650/- per M.T. under Serial No. 6(ii)(b) of Notification No. 55/80 at Ex. B as held by the Excise Authorities is clearly erroneous as Notification No. 55/80 does not prescribe levy of excise duty on waste and scrap. It only prescribes levy of duty on Steel Sheets. It was further contended that the Excise Authorities levied duty on waste and scrap under Notification No. 55 of 1980 as if what was cleared was steel sheets after having held that what was cleared by the petitioners was waste and scrap.

14. On the other hand Mr. Mehta the learned Counsel for the respondents contended that the petitioners have availed of proforma credit on the said steel sheets. The petitioners are, therefore, liable to pay duty at the rate applicable to the sheets in respect of waste and scrap cleared by them. It was further contended that the show cause notices allege that what was cleared by the petitioners was Industrial Scrap or strips or left-out cuts.

15. We are unable to accept the contentions advanced on behalf of the Respondents. The Authorities below held clearly held that what was cleared by

the petitioners was waste and scrap. It was not disputed by both the authorities below that what was cleared by the petitioners was not waste and scrap. A perusal of the two orders at Ex. I and L clearly shows that what was cleared was scrap and not Cold Rolled Sheets so as to attract duty at the rate of Rs. 650/- per M.T.

16. In view of the above position, we are of the opinion that once it is found by both the authorities below that what was cleared by the petitioners was waste and scrap, the appropriate rate of duty payable on the said waste and scrap can only be under Tariff Item No. 26 of the erstwhile first schedule to the Act read with Notification No. 47 of 1977. We are, therefore, of the opinion that the proceedings initiated against the petitioners seeking to recover differential duty u/s 11A are liable to be quashed. We accordingly set aside the orders dated 25th January, 1984 at Ex. I and the order dated 14th July, 1986 Ex. L. The petitioners will be entitled to refund of amount paid pursuant to the order at Ex. I dated 25th January, 1984 as admittedly the petitioners have recovered duty from the customers only at the rate of Rs. 450/- per M.T. and not Rs. 650/- per M.T. The petitioners would, therefore, be entitled to refund of Rs. 4,95,659.94. We accordingly direct the respondents to refund the amount of Rs. 4,95,659.94 to the petitioners within 12 weeks from today.

17. It is not disputed by the petitioners that the non-melting scrap was cleared by them on payment of duty at the rate of Rs. 650/- per M.T. which was recovered from the customers. Hence, in view of Section 11B of the Act, we are of the opinion that the petitioners are not entitled to refund of differential duty paid between Rs. 450/- per M.T. and Rs. 650/- per M.T. We, therefore, reject the claim of the petitioners for refund of differential duty in respect of non-melting scrap at the rate of Rs. 200/- per M.T.

18. Rule is made absolute to the aforesaid extent and we direct the respondents to refund the amount of Rs. 4,95,659.94 to the petitioners within 12 weeks from today. There shall be no order as to costs.

19. Issuance of certified copy expedited.