

**(2004) 05 SC CK 0038**

**In the Supreme Court Of India**

**Case No : Civil Appeal No. 3504 of 1997**

Elphinstone Metal Rolling Mills

APPELLANT

Vs

Collector of Central Excise, Bombay

RESPONDENT

**Date of Decision : 05-05-2004**

**Acts Referred:**

**Citation :** AIR 2004 SC 3515 : (2004) AIRSCW 3372 : (2004) 94 ECC 197 : (2004) 167 ELT 481 : (2004) 5 SCALE 668 : (2004) 5 SCC 548 : (2004) 2 SCR 163 Supp : (2004) 4 Supreme 405

**Hon'ble Judges :** S. Rajendra Babu, C.J.;G. P. Mathur, J

**Bench :** Division Bench

**Advocate :** Joseph Vellapally and Rajesh Kumar, for the Appellant; A.K. Ganguli Nisha Bagchi, P. Manish and B.K. Prasad, for the Respondent

**Final Decision :** Allowed

## Judgement

S. Rajendra Babu, C.J.—The appellant is engaged in the manufacture of (i) Copper Sheets and Circles falling under Tariff Item No.26A (2) out of Copper Scrap and Copper Wire Bars, (ii) Copper Wire Bars, Copper Wire rods and castings not otherwise specified falling under Tariff Item 26A(1a), and (iii) Copper slabs and billets falling under Tariff Item 26A(1) out of old Copper Scrap and Scrap of Copper Wire bars.

2. It is contended by the appellant that they are entitled to claim exemption under Notification No.74/65-CE dated 1.5.1965 as amended for the product Copper Sheets and Circles falling under Tariff Item 26A(2) and exemption under Notification No.119/66-CE dated 16.7.1966 as amended for the products Copper Wire Bars, Copper Wire rods and Castings not otherwise specified falling under Tariff Item 26A(1a) and Copper slabs and billets falling under Tariff Item 26A(1) in its classification list dated 25.3.1983 using the raw materials mentioned as aforesaid for the relevant period.

3. The Adjudicating Authority, the Appellate Authority and the CEGAT did not

accept the claim made by the appellant. The contention put forth before us is that the Notification in question dated 19.8.1980 exempting manufacturer of Copper, that is to say, plates, sheets, circles, strips and foils in any form or size falling under Tariff Item 26A(2) in the manufacture of which Copper in any form is used and on the virgin copper or the copper content of the alloy, the prescribed amount of duty of excise to be paid or is deemed to have been paid prescribing duty at the rate of Rs.700 PMT.

4. Under Notification dated 19.6.1980, it is claimed that the waste or scrap obtained from copper as Copper alloy where the prescribed amount of duty of excise has been paid on the copper or the copper content of the alloys would be exempted from taxation and the appellant had filed classification on that basis.

5. Show cause notices were issued to the appellant to the effect that their claims for exemption/concession asked for under Notifications in question cannot be accepted. There is the contention of the appellant that this notice has been issued sixteen months after the filing of the Classification.

6. The Tribunal took the view that the exemption is subject to the condition that the raw material out of which final product is manufactured should be duty paid, either the proof of such payment of duty on raw materials should be appropriate or there should be a deeming order that such raw materials are deemed to be treated as duty paid.

7. The claim of the appellant that the scrap had been purchased from the open market and, therefore, it should be deemed that it has been duty paid, the Assistant Collector took the view that the products are manufactured out of scrap purchased in the open market for which no duty paying documents are produced, exemption could not be extended to these products. The Waste and Scrap was dutiable only when it was a manufactured product and was otherwise excisable under the provision of the Act. All waste and scrap is neither a manufactured product nor is excisable and on this basis held that the appellant is not entitled to the benefit of the relevant Notifications.

8. We think the view taken by the Tribunal cannot be considered to be as inappropriate. Unless the scrap and waste are goods that had been used can be demonstrated to have been a duty paid goods, it cannot be assumed that they are so, particularly when it cannot be said with certainty that all scrap and waste material used has been subject to excise duty earlier. The waste and scrap was dutiable only when it is a manufactured product and not otherwise. The object of exemption being to avoid cascading effect in the matter of payment of excise duty.

9. Therefore this contention on behalf of the appellant is rejected. So far as the question of limitation is concerned, we find that the classification list filed by the appellant dated 25.3.1983 was not approved and a show cause notice was issued on 23.7.1984. The approval was accorded only on 15.9.1984. As there was no approval of the classification list and there was no final assessment, we think, in

the circumstances of the case the bar of limitation would apply only from the date of the finalization of the classification and we do not find that the decisions relied upon by the appellant either in Samrat International (P) Ltd. Vs. Collector of Central Excise, Hyderabad, or in Collector of Central Excise, Baroda Vs. M/s Cotspun Ltd., have any application to the present facts of the case.

10. Appeal, therefore, stands dismissed.