(1984) 01 BOM CK 0060

In the Bombay High Court

Case No : Writ Petition No. 796 of 1980

Hooseini Metal Rolling Mill Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 21-01-1984

Acts Referred:
Central Excise Rules, 1944 — Rule 56A

Citation : (1989) 20 ECR 518 : (1989) 39 ELT 526

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Judgement

1. The petitioners are engaged in the business of metal rolling. They convert zinc ingots into zinc ''callots''. The zinc ingots are supplied to the petitioners by manufacturers of dry cell batteries. They are melted by the petitioners and certain alloying elements are added to obtain a zinc alloy. The melted alloy is cast into slabs in moulds which are cooled by water. The slabs are hot rolled and cut into plates of required sizes. The plates are fed into a cold mill which rolls them into strips of the required thickness. The rolled strips are cut into suitable widths. The strips are fed into into punching presses which punch out circular and hexagonal forms. These circular and hexagonal forms are called ''callots'' or ''blanks'' and are utilised by dry cell battery manufacturers for being extruded into cans for use in making dry cell batteries.

2. Prior to the introduction in 1975 of the residuary Tariff Item 68 the callots were made exigible to excise duty under Tariff Item 26B(2), the relevant portion whereof reads thus :

"26B Zinc - 1........ 2. Manufactures, the following namely, plates, sheets, circles strips and foils in any form or size." Tariff Item 68 is a residuary item embracing "all other goods not elsewhere specified manufactured in a factory." It may be mentioned before proceeding further that by a circular of the Ministry of Finance dated 10th January, 1966 it is clarified that alloys of zinc with zinc as the main constituent and with various proportions of alloying metals attract duty under

Tariff Item 26B provided the zinc content is more than 50%, by weight, of the alloy.

3. On 3rd September 1975 the petitioners received a notice to show cause from the Superintendent of Central Excise, Bombay, which alleged that they had improperly cleared callots which fell under Tariff Item 68. On 20th September 1975 the petitioners showed cause and contended that the callots were manufactured by the punching duty paid zinc strips, they fell under Tariff Item 26B(2) and were not articles not specified elsewhere to be exigible under Tariff Item 68. They followed this up with a note which contended that the callots were nothing but duty paid zinc strips cut to shape for use in the manufacture dry cell batteries and that they fell within the heading of zinc strips under the Brussel''s Tariff Nomenclature. On 17th October 1975 the Assistant Collector of Central Excise held that the callots were not covered by Tariff Item 26B; they were outside the scope of all other items and, as such, were rightly classifiable under Item 68. He, therefore, confirmed the demand raised by the Superintendent but did not impose any penalty "since the question of excisability of the product was not properly understood by" the petitioners.

4. The petitioners preferred an appeal before the Appellate Collector of Central Excise who, in his order dated 31st January 1976, observed that the petitioners had at one stage claimed that in the Brussel''s Tariff Nomenclature the heading of zinc strips applied also to zinc strips cut to shape but had argued that the callots were nothing but zinc circles. He was unable to understand how the same item could simultaneously be a ''strip cut to shape'' and a ''circle''. He could not accept either submission. The callots were known in the market as callots and were so known to manufacturers of dry cell batteries. Therefore, they were not covered by Tariff Item 26B. Inasmuch as they were not covered by any tariff item upto Item 67, they fell under Item 68. The appeal was, therefore, rejected.

5. The petitioners filed a revision application before the Government of India. It was considered by a full bench. It was held that the expression ''slugs'' and ''callots'' were not known in international nomenclature and, in the absence of and I.S.I. specification of zinc products, it was appropriate to be guided by the British Standard Specifications which identified it as "a blank prepared for impact extrusion or forging." Thus, it was observed that the British Standard made a clear distinction between sheet, strip circle, etc., on the one hand and slug or callot on the other. Secondly, the bench observed that in written submissions the petitioners had stated that callots were not known in the market circles. Lastly, the bench observed that it was settled law that if a product was neither defined in the First Schedule or in the Act, it should be classified according to the meaning attached to it by those dealing with it, that is to say, by its commercial sense. The product punched out of zinc strips was known and sold to the dry cell battery manufacturers as callots and not as strips. Zinc callots had thus a distinct and separate identity in commercial nomenclature. They were not included in Tariff Item 26B(2). The inevitable conclusion was that they were classifiable

under Tariff Item 68.

6. This petition impugns the aforesaid orders.

7. It is an admitted position, upon affidavit in reply on behalf of the respondents, that prior to 1st March 1975 callots manufactured by the petitioners were cleared under Tariff Item 26B(2). Thus, according to the excise authorities themselves, callots were specified under Tariff Item 26B(2) and were being made exigible duty thereunder. No satisfactory explanation is forthcoming in the impugned orders, the affidavit in reply and across the bar how callots ceased to be specified under Tariff Item 26B(2) on and after 1st March 1975 and became exigible under the residuary Tariff Item 68 which covers only those articles which are not specified by any other item of the tariff. This affords the strongest indication that callots were and remain exigible under Tariff Item 26B(2).

8. Tariff Item 26B(2) covers zinc strips in any forms or size. The callots are made by punching zinc strips into circular or hexagonal shapes. Callots, therefore, can legitimately be classified as strips. Alternatively, those callots which are punched to a circular shape fall within the description of zinc circles. It was, obviously, upon this basis that callots were made exigible to duty under Tariff Item 26B(2) by the excise authorities prior to 1st March 1975. The Brussel''s Tariff Nomenclature supports this because it includes strips cut to size.

9. It appears that at no stage prior to the order itself were the British Standard Specifications referred to and the petitioners had no opportunity to deal therewith. The petitioners'' instructing advocates had called upon the respondents to make that specification available at the time of hearing before the court but the respondents do not have it here. The court has, therefore, been unable to derive any benefit therefrom and is unable to appreciate what the distinction is that is made therein between sheet, strip and circle on the one hand and slug and callot on the other hand, as set out in the order or revision. It is patent that the order in revision has misread the petitioners'' written submissions made after the hearing. At no point thereof have the petitioners stated that callots are not known in the market as circles. What they have said is that even if callots are not known in the market as circles by virtue of the artificial definition given in sub-item (2) of Tariff Item 26B, they should be treated as circles. Lastly, the order in revision refers to the fact that callots are known and sold to dry cell battery manufacturers as callots and not strips. What the evidence is in this behalf is not referred to.

10. Mr. Devdhar, learned advocate for the respondents, stated that since 1st March 1981 a separate sub-item 2(a) has been incorporated in Tariff Item 26B which specifies callots. He draws my attention to budget instructions which refer to this amendment. They note that there had been disputes regarding the classification of zinc callots which were small blanks, generally circular or hexagonal in shape, used in the manufacture of cans for dry battery cells. A separate item (2a) had been incorporated in Tariff Item 26B. A notification was

being issued in respect of callots manufactured from duty paid scrap/unwrought zinc. Where callots were manufactured from duty paid unwrought zinc the manufacturers would be at liberty to follow Rules 56A procedure. Where callots were manufactured from duty paid plates, sheets, strips, etc., it would be necessary to follow the procedure under Rule 56A. In integrated factories where callots were made from duty paid ingots, no duty need be collected at plate/ sheet/strip stage. It would be payable at the final stage of clearance of callots. If anything, these instructions support the view that callots fell under Tariff Item 26B(2) and that, to obviate the disputes that had arisen, callots were being separately specified.

11. Mr. Devdhar also drew my attention to the judgment of the Calcutta High Court in Union Carbide Co. Ltd. v. Assistant Collector, Central Excise, in matter No. 96/75 decided on 10th May 1976 by Sabyasachi Mukharji, J. 1978 E.L.T. 180. That was a matter in which the excisability of rough-rolled zinc which had been used for punching zinc callots was concerned. The Appellate Collector had held that zinc callots were not exigible to duty under Tariff Item 26B(2) and that decision had concluded the question whether zinc callots were exigible to duty or not. It was not a question which the learned Judge was called upon to decide. It is difficult to see how this decision can help to arrive at a solution of the question before me.

12. The learned advocate for the respondents also referred to the judgment of the Allahabad High Court in Geep Flashlight Industries Ltd. v. Union of India, (Writ Petition Nos. 370/76 and 373/76 decided on 29.11.1978 by H. N. Seth and V. K. Mehrotra JJ. 1979 E.L.T. 674. It was the contention of the Excise authorities in Allahabad that the rough rolled flat forms of zinc which emerged at an intermediate stage of the process of manufacture of dry cell batteries ought to be treated as zinc sheets within the meaning of Tariff Item 26B(2). The manufacturer contended that there were not zinc sheets. Upon evidence the court came to the conclusion that the demand made by the excise authorities for excise duty on the flat form of zinc produced by the petitioner''s factory at an intermediate stage of the process of manufacture of dry cell batteries was correct. This would seems to establish that the view that the material out of which the callots are punched in classifiable as zinc sheets or strips and exigible to duty under Tariff Item 26B(2) is upheld.

13. To conclude, it appears to me that the better view to take is that callots are exigible to duty under Tariff Item 26B(2). In view of this conclusion, I do not go into the alternate contention of the petitioners that they are entitled to claim the benefit of an exemption notification.

14. The petition is made absolute in terms of prayer (a). No order as to costs.

15. Rule accordingly.

