
(1976) 05 DEL CK 0025

In the Delhi High Court

Case No : Civil Writ Petition No"s. 1208 and 1209 of 1967

Kelpunj Enterprises

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 28-05-1976

Acts Referred:

Citation : (1977) ILR Delhi 198

Hon'ble Judges : T.P.S Chawla, J

Bench : Single Bench

Advocate : S.L. Watel, C.R. Soma Sekharan, P.N. Jain and B. Dutta, for the Appellant;

Judgement

T.P.S. Chawla, J.

(1) The two petitions dealt with by this judgment pose a question of metallurgy. The question is : what is the difference between "alloy" steel and "stainless" steel ? As might be expected, it has arisen in connection with an import license.

(2) The petitioner, M/s. Kelpunj Enterprises, is a partnership firm. It had a small scale industrial unit in the Industrial Estate in Trivandrum. On the basis of an Essentiality Certificate issued by the Director of Industries and Commerce, Trivandrum, the petitioner obtained an import license dated 7th March 1962 from the Regional Iron and Steel Controller, Madras. The license permitted the import of "Tool and alloy steel/alloy steel strips/sheets containing chromium and nickel in addition to carbon" up to a c.i.f. value of Rs. 3,37,500. It was an actual user's license, the goods being intended to be used for the "Manufacture of all kinds of saw blades".

(3) Under the license, the petitioner imported two consignments of steel from Japan. Their aggregate value was Rs. 1,61,728.92. Both the consignments arrived together on the same ship in February 1963 at Madras. Bills of entry were presented on behalf of the petitioner declaring the goods to be "Alloy steel strips containing nickel and chromium in addition to carbon". The goods were not

released for delivery.

(4) By two notices dated 19th July 1963, one in respect of each consignment, the Collector of Customs, Madras, called upon the petitioner to show cause why the goods should not be confiscated u/s 111 clauses (d) and (m) of the Customs Act 1962, and a penalty should not be imposed u/s 112 of that Act. It was said in the notices that the goods "have been found on test to be stainless alloy steel sheets" and were not covered by the import license. Further, it was said, that the goods imported were assessable to customs duty "under item 63 (20A) of the First Schedule to the Tariff Act 1934, and not under, item 63.(20)(2)(ii). as claimed by the petitioner. It was added that the goods had been mis-declared deliberately with a view to evading payment of higher duty".

(5) In its replies dated 30th July 1963, the petitioner repudiated all the allegations made in the notices sent by the Collector. It maintained that the goods imported were in conformity with the license, and were not assessable to customs duty under item 63 (20A). The petitioner denied that it had mis-declared the goods, and asserted that its conduct had been "entirely bona fide and above board". A request was made that a copy of the test report, on the basis of which the notices appeared to have been issued, be furnished to the petitioner, and, also, that a personal hearing be granted.

(6) About a week before the hearing, a copy of the test report was furnished to the petitioner. It is dated 2nd July 1963, and reads as follows: "Report on :-Alloy Steel Strips. Results of tests on two steel samples received on 26-6-63 are as given below :- Markings :-B/E No: G. M. 178 Line No. 106 & 113 dt. 2-3-63 and 27-2-63 respectively. Chemical Composition:-

	Test piece marked	Test piece marked	S.
	33/100/63, Gr. Iii	33/101/63, Gr. Iii	
			% Carbon.
0.13	0.14	% Manganese.	1.56
1.25	% Nickel.	8.08	8.09
% Chromium.	18.67	18.03	% Tungsten.
Nil.	Nil.		

Remarks:-From Chemical composition it appears that both the samples are stainless alloy steels. sd/- (S. K. Das) Asstt. Inspecting Officer (Met). For Director of Inspection (Met)." The office of the Director of Inspection (Metallurgical) is situated in Tatanagar.

(7) At the oral hearing held on 24th August 1963, a partner of the petitioner firm appeared. No evidence was produced on behalf - of the petitioner, nor was any request made for cross-examining Mr. S. K. Das, the Assistant Inspecting Officer who had signed the test report. It was contended before the Collector that as the test report showed that the steel imported contained chromium and nickel in addition to carbon, the requirements of the license had been met, for no specific percentage of these elements had been prescribed. Merely because this kind of steel might also be called "stainless" steel, it was argued, could not affect the

position. Respecting the question of customs duty payable, it was urged that as the steel had been imported in the form of "strips" and not in the form of "plates" or "sheets", item 63 (20A) would not apply. For the rest, it was said, that the partners of the petitioner firm had no technical knowledge, and an order had been placed with the Japanese supplier strictly in accordance with the terms of the license. As a further mitigating circumstance it was mentioned that, in the past, the petitioner had made wire-netting only, but, since an inquiry for saw blades had been received, it had been decided to import steel containing chromium, nickel and carbon.

(8) By two separate orders dated 24th August, 1963, the Collector rejected the contentions put forward on behalf of the petitioner. He held that the license did not permit the import of "stainless" steel, and that the goods imported were "sheets" as they had a width ranging from 15 inches to 30 inches whereas "strips" should be of a width less than 5 inches. The fact that the sheets were in the form of rolls, he regarded as immaterial. He also observed that the low carbon content of the imported steel would make it "too soft" for use in the manufacture of saw blades. The result was that he ordered the goods to be confiscated, but acting u/s 125 of the Customs Act, 1962 gave an option to pay a fine in lieu of confiscation. The fines imposed were Rs. 1,01,000 for one consignment, and Rs. 69,100 for the other.

(9) Sometime afterwards the customs duty as assessed by the Collector. and the fines imposed by him in lieu of confiscation, were paid, and delivery was taken of both the consignments. Simultaneously, the petitioner filed two appeals before the Central Board of Excise and Customs against the orders made by the Collector. These appeals were dismissed by a common order dated 7th July, 1965. Now, for the first time. it was agitated on behalf of the petitioner that an opportunity ought to have been afforded for cross-examining Mr. S. K. Das. This submission was rejected by the Board on the ground that no such request had been made to the Collector, and the "test memo was not contested". On the merits, the arguments were the same as before. In addition a certificate was produced from the Director of Industries and Commerce, Trivandrum, stating that all the imported steel had been "actually used" by the petitioner in its factory at Trivandrum "in the manufacture of saw blades". The Board said :

"The fact remains that the goods imported are 18-8 quality stainless steel and their import against the license produced would have been accepted, had satisfactory evidence regarding the end use viz. "manufacture of saw blades" been produced. In this connection the Board observes that the goods imported are 18-8 quality stainless steel and are not the type used in the manufacture of saw blades. For saw blades, high carbon, low nickel and low chromium steel is generally used and not low carbon, high nickel. The appellants have not produced any technical literature to substantiate their contention that high nickel chrome steel of the type imported can be used for the manufacture of saw blades; nor have they been able to produce any sample to prove their

contention. As regards the certificate from the Director of Industries, Trivandrum, produced by the appellants, the Board observes that neither it makes a reference to the quality of the steel used in the manufacture of saw blades nor does it indicate the quantity (weight) actually used in the manufacture of saw blades. In the circumstances, the Board is unable to consider the certificate dated 1-6-1964 issued by the Director of Industries as sufficient proof of the end use of the goods imported."

These were the reasons for which the appeals were dismissed.

(10) The petitioner then submitted two petitions for revision to the Government of India. They were dismissed by a common order made on 24th March, 1967 by the Secretary, Ministry of Finance. However, the fines payable in lieu of confiscation of the goods were reduced from Rs. 1,01,000 to Rs. 45,000 and Rs. 69,100 to Rs. 30,000 respectively, and the excess amounts paid were ordered to be refunded. Dealing with the argument on behalf of the petitioner that the Board had misdirected itself in considering "end use", the Secretary said :

"They have argued that at the stage before the Board this original charge could not be enlarged to bring in the question of end-use of the steel sheets imported. The Government of India observe that at the time of hearing before the Board the petitioners" advocate inter alias urged that the license was issued as "actual user license" on the basis of the "essentiality certificate" granted by the Director of Industries, Trivandrum, and emphasised the point regarding actual use to impress that the customs house charge was baseless. They also then produced a certificate dated 1-6-1964 from the Director of Industries, Trivandrum, that the steel sheets imported by them had been used in the manufacture of saw blades. It was only after this assertion by the petitioners that the Board probed into this question and asked for the sample of the finished product. The petitioners" plea that the Board enlarged the original charge by bringing in the question of end-use is Therefore not acceptable."

A little afterwards it was said that :

" The fact that the license was issued to an actual user for manufacture of band saw blades and the technical information that the stainless steel imported was not suitable for manufacture of saw blades, are factors which are relevant in adjudging the merits of the case. At the time of hearing granted at the revision petition stage, the petitioner could not explain satisfactorily the reasons for their failure to produce samples of the saw blades when notice was served on them to do so in November 1964. Their failure -to do so leads to the adverse presumption that they were unwilling to furnish the sample of the finished products to the test of their having been produced from the imported material."

(11) By the two petitions under Articles 226 and 227 of the Constitution now before me, it is sought to have those various orders quashed. An order in the nature of mandamus is also prayed for to compel the respondents to refund to the petitioner the amount deposited "by way of fine in lieu of confiscation". The

respondents, of course, are the Union of India and the authorities who made the orders.

(12) It will be observed, and this was pointed out by counsel for the petitioner himself, that there is no prayer for refund of any part of the customs duty paid on the imported steel. Thus, I am not really concerned with the question as to the item in the Tariff Schedule under which customs duty ought to have been charged. The sole question for decision before me is whether the steel imported conformed to the description in the import license. There is no dispute that if it did not, it was liable to confiscation. Nevertheless, in the orders now impugned, whilst dealing with this latter question reference has been made to the items in the First Schedule of the Tariff Act relied upon by each side for determining customs duty. Even before me those items were referred "to as some kind of aids for construing the license. To my mind, they do not bear on the point, nor assist in resolving it, though they are capable of introducing confusion. The only link is that the question for decision before me was also partially involved in the dispute as to customs duty. Let me elucidate this a little further.

(13) At the relevant time, item 63(20A) in the First Schedule to the Tariff Act read : "Stainless steel plates and sheets". According to the Collector of Customs the imported steel was chargeable to customs duty under this item. As I understand the case of the petitioner, it sought to escape from this item in two ways. Firstly, the petitioner maintained, that the steel imported was in the form of "strips" and so was not covered by this item. I should mention that by amendment at some later date, the words "and strips" were added at the end of this item, but that amendment is admittedly not applicable to the present case. So, the item had to be applied as in its original state. In assessing the steel for purposes of customs duty under this item, the Collector relied on an Instruction issued by the Central Board of Revenue in 1934. It is quoted on page 408 of the Indian Customs Tariff Guide (11th edition). The Instruction is with reference to item 63 of the First Schedule to the Tariff Act, and says that a piece of iron or steel of less than 1/8 inch thickness and not greater than 5 inches in width will be classified as a "hoop or strip". If the width is more than 5 inches, even though the thickness be the same, the appropriate classification is "sheet". The width of the imported steel ranged between 15 inches to 30 inches. Therefore, the Collector was perfectly right in holding that they were "sheets".

(14) Secondly, it was contended by the petitioner, that the steel imported was not "stainless" steel, and, hence, could only be assessed under item 63(20) (2) (ii). Omitting unnecessary details, that item, at the relevant time, applied to Iron or steel sheets other than high silicon electrical steel sheets and stainless steel sheets". In this manner, the question whether the steel was stainless steel arose for adjudicating upon the customs duty. Though the two complementary items of the Tariff Schedule to which I have referred give rise to that question, they furnish no clue to the answer. The question I have to decide is slightly different. It is, whether the imported steel was "stainless" steel or "alloy" steel ? To the

extent that "stainless" steel enters into consideration in both the question there is common ground. .But, that is all.

(15) Having got these preliminaries out of the way, I turn to the question with which I am concerned. Much light on the subject can be gathered from some definitions in Chamber's Technical Dictionary. In argument the 1968 edition of that Dictionary was cited, but later I have seen the 1975 paper-back edition which is entitled "Dictionary of Science and Technology". There are some small difference's in the definitions given in the two editions, though not very material, and I will quote from the later edition. First, it is necessary to know the meaning of "alloy". It is defined as follows : Alloy (Chem.). A mixture of a metal and some other element(s), e.g. steel, heated up and cooled to a solid (the alloy). (Met.) Metal prepared by adding other metals or non metals to a basic metal to secure desirable properties. Solid solution in which maximum difference in radius of component atoms is below 15 per cent. Lower m.p., decreased electrical conductivity, and increased hardness are characteristics." Thus, the generic concept of an "alloy" is that it is "a mixture of a metal and some other element or elements". The etymology given in the Concise Oxford Dictionary shows that it is derived from the Latin "Alligare" meaning to "bind" through the French "aleier" meaning to "combine".

(16) All steels are alloys. This appears from the definition of "steel" given in Chambers's, which reads :

"STEEL(Met.). Essentially an alloy of iron and carbon. Contains less than 2 per cent carbon, less than 1 per cent manganese, and small amounts of silicon, phosphorus, sulphur and oxygen. Mechanical properties can be varied over a wide range by changes in, composition and heat treatment. Mild steel contains less than 0.15 per cent C, medium 0.15-0.3 per cent C, hard more than 0.3 per cent C. If used as a structural material in reactors as a neutron or thermal shield, it must be outside the active section. This-restriction is due to some of its constituents becoming strongly radio-active, with long lives, on capturing neutrons. See also alloy steel, stainless steel."

It is important to observe that the hardness of steel depends upon its carbon content : the higher the proportion of carbon, the harder the steel. When the proportion of carbon is more than 0.3 per cent the steel is described as "hard". If the proportion is less, it is "medium" or "mild".

(17) Many varieties of steel are made so as to have properties considered desirable for a particular purpose. One of them is "carbon steel". In Chambers's it is described as follows :

"Carbon steel (Met.). A steel whose properties are determined primarily by the percentage of carbon present. Besides iron and carbon, carbon steels contain manganese (up to 1.6 per cent), silicon (up to 0.6 per cent), sulphur and phosphorus (up to 0.1 per cent), but no chromium, nickel, molybdenum, etc."

(18) Another variety is "alloy steel". This is described in the same Dictionary as follows :

"ALLOY(or special) steel (Met.). A steel to which elements not present in carbon steel have been added, or in which the content of manganese or silicon is increased above that in carbon steels. See high speed steel, nickel steel, stainless steel; also chromium."

Here, there are two further observations to be made. Firstly, the word "alloy" in the term "alloy steel" is obviously not used in its wide generic sense, but as a name associated with a particular kind of steel. Secondly, that alloy steel, unlike carbon steel, may contain chromium, nickel and molybdenum. For the present purpose only chromium and nickel are significant.

(19) Yet another variety is "stainless steel". The description in Chambers's is :

"Stainless steel (Met.). Corrosion-resistant steel of a wide variety of compositions, but always containing a high percentage of chromium (8-25 per cent). The following are typical compositions : 13 per cent Cr, 0.35 per cent C; 18 per cent Cr, 0.15 per cent C, 8 per cent Ni; 20 per cent Cr, 0.25 per cent C, 10 per cent Ni, 1.2 per cent Nb. These are highly resistant to corrosive attack by organic acids, weak mineral acids, atmospheric oxidation, etc. Used for cutlery, furnace parts, Chemical plant equipment, stilts, valves, turbine blades, ball-bearings, etc."

The conclusion of vital importance is that what distinguishes stainless steel from other varieties of steel is a "high percentage of chromium". "Alloy" steel may also contain chromium, but, relatively, the percentage will be low.

(20) These conclusions are fortified by other authoritative sources, In Volume 21 of the Encyclopedia Britannica (1969 edition) under the title "Stainless Steel" it is said :

"Stainless steel basically is an alloy of chromium and iron containing more than 10 per cent chromium. When chromium is added to iron in such quantities, it imparts throughout the entire body of the metal remarkable resistance to corrosion and heat. Other elements may be added to the iron-chromium combination to obtain steels with special characteristics. The most important of these is nickel, which is used to produce 18-8 (that is 18 per cent chromium, 8 per cent nickel, balance iron)."

(21) In the same volume of the Encyclopedia there is also an article entitled "Steels, Alloy". This contains a general survey of steels. With regard to the hardening effect of carbon, there are two sentences occurring in this article which bear out what I have said above. One is :

"CARBON(in the Chemical compound iron carbide, cementite, Fe_3C) is the principal alloying element in iron, proportionately increasing its strength and hardness, especially after correct heat treatment."

And, the other :

"Thus, the intensity of hardening primarily depends on carbon content."

Counsel for the petitioner referred to certain passages under the same titles in the 1973 edition of the Encyclopedia, but I do not find anything there which leads to a different conclusion.

(22) In the "Materials Handbook" (9th edition) by George. S. Brady it is said on page 723 with reference to "Stainless Steel" : A term now -covering a wide range of iron alloys, but all characterised by having a high content of chromium which makes them highly resistant to oxidation and corrosion even at elevated temperatures. They were first produced in America in 1914 under English and German patents. The original composition was 13.5 per cent chromium and 0.35 carbon. The original Knipp austenitic, or Ka steel, or simple austenitic steel, had 20 per cent chromium and 7 nickel, which was later balanced at 18-8. The eighteen-eight steels, of chromium-nickel steels, were called super stainless steels in England to distinguish them from the plain chromium steels." Then follows an elaborate description of specific brands of stainless steel. There is a general discussion of "steel" on page 734, and of "alloy steel on page 27. Sentences here and there corroborate the conclusions that I have derived, but I need not quote them.

(23) Now, looking at the Chemical composition stated in the test report issued by the Assistant Inspecting Officer (Met.), the glaring conclusion is that the steel imported was 18-8 stainless steel. Ignoring fractional variations, the content of chromium was 18 per cent, and that of nickel 8 per cent. Furthermore, the carbon content was between 0.13 per cent and 0.14 per cent. This would mean that it was mild steel, and wholly unsuited for manufacturing saw blades which need to be hard. These conclusions seemed so plain as to leave practically no room for doubt.

(24) Still, as the matter was of a technical nature, in order to make doubly sure, and also to eliminate the grievance of the petitioner that an opportunity for cross-examination had not been afforded, I ordered Mr. S. K. Das to be produced for examination. In his statement he said the same things as are said in the books which I have quoted, and further that he had "not the slightest doubt that the steel which was tested was 18-8 stainless steel." As to "alloy steel", he said, that it was "a well understood term used in metallurgy" in the sense which he had indicated, which was the same as the definition in Chambers's Technical Dictionary. He explained that In stainless steel the carbon content is comparatively low and the chromium content is comparatively high", and that "generally the chromium content is more than 10 per cent". These propositions were then exemplified by divers assumed combinations, from which it is quite clear that the percentage of chromium is the crucial factor for deciding whether a given steel is "stainless" steel.

(25) Towards the end of his examination-in-chief Mr. Das said :

"Generally stainless steel is referred to only as such. It is not generally referred to as alloy steel, though obviously it is an alloy steel. When steel is of the composition mentioned in the report Exhibit R-1 it is referred to as stainless steel. If the proportion of chromium in the steel had been 5 per Cent, I would have called it alloy steel. It would not be stainless steel, the reason being that it would not have the properties required of stainless steel to a sufficient degree."

In the second sentence of the .passage just quoted, the word "alloy" has been used twice : the first time in its special sense as a name, and "the second time in its general or generic sense. It Was in the latter sense that it was used in the report when the tested samples were described as "stainless alloy steels". Mr. Das said":

"IT is true that in my remarks in Exhibit R-1 I have referred to the steel as "stainless alloy steels". "What I meant was that it was stainless steel. I did not mean that it was some other kind of alloy steel different from stainless steel."

(26) Most of the cross-examination I found to be futile and irrelevant, so that in the end, after giving much latitude, I was constrained to order it closed. The only relevant point which seemed to emerge was that the percentage of chromium necessary to constitute stainless steel was not sharply defined, and even the books were not agreed upon it. Undoubtedly, that is so. In Chambers's the percentage of chromium in stainless steel is stated as ranging from 8-25 per cent, while in the Encyclopedia Britannica it is said to be more than 10 per cent. Mr. Das seems to agree with the latter figure. However, in the present case all this is immaterial because the percentage of chromium was 18 per cent, and that. would make it stainless steel on any view.

(27) Since Mr. Das said that the analysis of the samples of steel had been made by the Chemical Department, and not by him, nor under his supervision, it was argued that the primary facts on which his opinion was based had not been proved. This submission proceeds on the misconception that this was an original proceeding in which issues of fact were being tried. Obviously, that was not the position. The only purpose of calling Mr. Das was to understand the reasons for the opinion which he had given, and to enable the petitioner to cross-examine him with regard to them. It was never the intention to decide any disputed questions of fact,, but only to verify the inferences. Indeed, at no stage did the petitioner question the Chemical composition shown in the report. Nor did it produce any expert of its own. to establish a different, Chemical composition. No attempt was ever made on its behalf to lead any .evidence at all. Moreover, even in" a letter dated 16th May 1963 alleged to have been written by the Japanese supplier to the petitioner, the contents are said to be chromium about 15 per cent, nickel 6 per cent and carbon 0.75 per cent".. I do not place any reliance on this letter, but even if it, be believed the percentage of chromium, was high enough to make the goods "stainless" steel.

(28) "PICKING on the words "it appears" used by Mr. Das..in his, test reports it. -

was emphasised .that even he was-not fully.. ..sure .of, .his opinion. I think this is a flimsy argument. By their very training men of science are taught not to be dogmatic ,and I see no warrant for inferring hesitancy from those words. Besides, Mr. Das has now appeared before me and stated that he had no doubt,

(29) Mr. Das repeated categorically a number of times that the steel imported could not be used for making saw blades. The reason", he "said, "is that the carbon content is only. 0.13 per cent, and, Therefore, this steel will not have the necessary hardness for cutting purposes". On further questioning he stated that supposing a saw blade were made of this kind of steel, it "would be useless because the teeth would bend or get distorted in the process of cutting". He added that "The carbon content of steel required to make saw blades would be 0.7 per cent or upwards up to the limit of say 1.1 percent". In his opinion, steel which contained no chromium at all would be better for making saw blades. He concluded by saying : 1 am absolutely definite that this kind of steel is never used for saw blades and is wholly unsuitable for saw blades". The purpose of the cross-examination was to show that Mr. Das did not have any special knowledge of saw blades, and to gain an admission from him that soft woods and boards could be sawn with blades made of the imported steel. But, Mr. Das remained firm that blades made out of this kind of steel would be ineffective for cutting soft woods and .boards.

(30) From all that has gone before, I am more than convinced that the imported steel could not have been used for making saw blades. Yet, the petitioner was able to produce a certificate from the Director of Industries and Commerce, Trivandrum, to the effect that it had been used for that purpose. The Board rejected the certificate because it did not indicate the "quality" and the "quantity" of steel used in the manufacture of saw blades. I would concede that these were not good grounds for rejecting the certificate. Whether true or false, the quantity of steel alleged to have been so used is mentioned therein, and the quality was, in effect, identified by the works "Nickel Chromium bearing Alloy Steel Strips" and the reference to the import license. But, I would reject the certificate on the simple ground that, in the face of the other material put before me, I do not believe it.

(31) The fact that the imported steel could not be used and was not used for making saw blades, is established by one grave lacuna which has subsisted throughout. As early as November 1964, the petitioner was called upon by the Board to produce samples of the saw blades alleged to have been manufactured by it out of the imported steel. No samples were produced. Nor were they produced at any later stage. In the course of the hearing before me, I invited counsel for the petitioner to produce a sample now. The ready answer was that all the saw blades manufactured had been sold. But, it is impossible to believe that in November 1964 the petitioner could not lay its hands on one single saw blade manufactured by it out of the thousands which, presumably, it must have produced. I went further and asked counsel for the petitioner to show me a saw

blade made out of this kind of steel by any manufacturer whosoever. But none has been produced. The normal appearance of a saw blade is steel grey. I have yet to see a saw blade, even a band saw blade, made of shining silvery stainless steel. It seems to me that the certificate given by the Director of Industries and Commerce, Trivandrum, was issued either routinely or for reasons which I would not care to state.

(32) It was argued that the Board and the Central Government had misdirected themselves by going into the question of "end use", for there was no charge against the petitioner that it had violated the terms of the actual user's import license by not using the goods for the purpose designated. That there was no such charge against the petitioner is, of course, true. However, in order to decide whether the imported steel "alloy" steel or "stainless" steel it was certainly relevant to consider whether it was fit for the purpose intended. The Collector thought it was not because it was "too soft" for making saw blades. To overcome this objection, the petitioner voluntarily produced the certificate from the Director of Industries and Commerce before the Board so as to falsify the reason given by the Collector. The Board rejected the certificate for reasons which may not be entirely good. Nevertheless, the question whether the imported steel could have been used for making saw blades still remained relevant. And, that is what the Central Government held. If the petitioner had actually succeeded in establishing that the steel had been used for making saw blades, that would have gone a long way to winning its case, not because there was any charge of misuse against the petitioner, but because it would show what was the kind of steel which was imported. I do not think that any of the authorities below have misdirected themselves.

(33) Summing up the case on behalf of the petitioner it was said, that even if this stainless steel, nonetheless it conformed to the words of the license as it contained "chromium and nickel in addition to carbon". The license, it was stressed, did not specify any minimum or maximum percentages of these elements, and hence ought to be interpreted as covering even stainless steel. Also, I was urged, on the basis of *Minerals and Metals Trading Corporation of India, Ltd. Vs. Union of India (UOI) and Others*, and *Union of India (UOI) and Others Vs. The Tata Iron and Steel Co. Ltd.*, to disregard metallurgical terminology and give to the words "alloy steel" their ordinary commercial meaning. "Stainless" steel it was said, was not a term known to men of commerce. Nor did the relevant statutes or orders recognise any distinction between "alloy" steel and "stainless" steel. Even usage, it was argued, varied from country to country, and the Japanese supplier in this case had in his invoice described the goods as "alloy steel". In any case, it was submitted, proceedings under the Customs Act were of a quasi-criminal nature as they were capable of resulting in confiscation of goods or imposition of penalties, and the burden was on the customs authorities to prove that the goods had been imported without a valid license. The benefit of the doubt had, Therefore, to be given to the petitioner. For these propositions I was referred to *Amba Lal vs. Union of India*

and others, AIR 1961 S.C. 264, Gian Chand and Others Vs. The State Of Punjab, , Shanti Prasad Jain etc. vs. The Director of Enforcement, Foreign Exchange Regulation Act and another, etc., AIR 1964 S.C. 1764, and Radha Kishan Bhatia Vs. Union of India (UOI) and Others, .

(34) The answer to all these arguments is the same. "Stainless" steel is a well known term. It is used even in common parlance, I have no reason to think that men of commerce are unaware of it. Likewise, there is no reason to suppose that the term "alloy" steel is not understood by businessmen. Item 16 (b) of the First Schedule to the Import (Control) Order 1955 prohibits the import, without a license, of :

"High speed, alloy and carbon tool steel sections, stainless and heat resisting steels-"

Here, "alloy" steel and "stainless" steel occur side by side in the same statutory context. So, the distinction is recognised even by statute. This is corroborated by some items in the First Schedule to the Tariff Act. As I have already mentioned, item 63 (20A) specifically speaks of "stainless steel". It is also mentioned in item 63(30), and in contrast, sub-item (3) mentions "alloy steels". Thus, the two terms "alloy" steel and "stainless" steel have received statutory recognition for a very considerable period of time.

(35) There was no reason, that I can see, for the petitioner to confuse "alloy" steel mentioned in the import license with "stainless" steel. I attach no importance to the fact that the Japanese supplier described the goods as "alloy steel". Such a description could easily be manipulated collusively. In any case, it does not matter how the buyer and seller choose to describe the goods. The question is whether the goods which arrived at the Port accorded with the description in the import license. For the reasons I have given, I have no hesitation in holding that they did not. I accept that the burden of proof is on the customs authorities, and that they must, prove the case against the petitioner beyond a reasonable doubt. In my opinion they have discharged that burden, and I am not left with any doubt whatsoever.

(36) The grievance of the petitioner that the rules of natural Justice had been violated because no opportunity had been afforded for A cross-examining Mr. Das no longer survives, as that opportunity has now been afforded. I need not Therefore discuss the cases which were cited in this connection. That should not, however, be taken to mean that I think there was any substance in the grievance.

(37) The only other violation of the rules of natural justice alleged was that the Central Government had relied on some "technical information" which had not been disclosed to the petitioner. It is clear from the context in which those words occur that the technical information was to the effect "that the stainless steel imported was not suitable for manufacture of saw blades". Information of this kind must have been derived from some technical books. I do not know whether the technical aspects of the matter were discussed before the Secretary to the

Government of India, though I would imagine that they were. If the Secretary consulted some technical book for arriving at the conclusion which he stated, and that book was not cited at the hearing, I do not think that any rule of natural justice is thereby violated. If supposing, contrary to my opinion, there was a technical breach of some rule of natural justice the effect of the breach was so minimal as not to call for interference. Besides, I, myself, have considered the matter in detail, and reached the same conclusion that the imported steel could not be used for making saw blades.

(38) In the last resort it was suggested that I ought to remand the matter for reconsideration, but I can see no reason for adopting such a course. Having fully examined the matter, I am satisfied that there are no reasons for disturbing the orders made by the respondents.

(39) Accordingly, these two petitions are dismissed with costs. Counsel's fee Rs. 250.00 . One hearing fee.