**(1993) 10 P&H CK 0137**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 6553 of 1992

Samana Steel Rolling Mills — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

**Date of Decision :** 14-10-1993

**Acts Referred:**

**Citation :** (1994) 46 ECC 175 : (1994) 52 ECR 233 : (1994) 70 ELT 213

**Hon'ble Judges :** Jawahar Lal Gupta, J

**Bench :** Single Bench

**Advocate :** H.S. Sawhney and Jasleen Sawhney, for the Appellant; G.B.S. Sodhi and Raghbir Chaudhary, for the Respondent

**Final Decision :** Allowed

# Judgement

Jawahar Lal Gupta, J.—The petitioners in these three writ petition Nos. 6553, 6947 and 6952 of 1992 have an identical grievance. These can, therefore, be disposed of by one order. Learned counsel for the parties are agreed that the facts as stated in Civil Writ Petition No. 6553 of 1992 are representative of the correct position. These may be briefly noticed.

2. The petitioner is a partnership firm which has set up a rolling mill at Mandi Gobindgarh. It started production on November 1, 1990. The petitioner avers that it submitted a classification list to the Department of Central Excise in which it described its product as ''Bars''. On November 15, 1990, the petitioner was given a notice to show cause as to why its product be not classified as ''Hooks and Flat Products'' instead of ''Bars''. Finally, the classification list of the petitioner was modified and approved as ''Flats'' with effect from November 1, 1990. Thereafter, the petitioner has been assessed for the levy of excise duty on the basis that it was producing ''flats''.

3. On December 20, 1990, the Custom Excise Gold Appellate Tribunal gave a decision presumably to the effect that products such as those produced by the petitioner have to be classified as ''Other Bars and Rods'' and not as ''flats''. The

Department of Excise and Customs challenged this decision before the Apex Court by filing a petition for Special Leave on March 25, 1991. However, on April 6, 1992, the Superintendent, Central Excise informed the petitioner that the products "may be treated and cleared as ''other Bars and Rods'' --- on an undertaking that you will abide by the out-come and decision of the Hon''ble Supreme Court of India---". This was followed by a corrigendum dated April 28, 1992. The petitioner was informed that on reconsideration "the classification list is approved as ''other Bars and Rods'' on payment duty at the rate of Rs. 800 PMT (BED) plus 15% SED on BED." However, the petitioner was called upon to file an undertaking to abide by the final out-come and decision of the SLP filed by the Department.

4. It is the admitted position that the excise duty leviable on ''flats'' is more than that on ''Bars''. On ''flats'', the basic excise duty is leviable at the rate of 10% of the market value of the product. It roughly comes to Rs. 1200 PMT. There is a special excise duty at the rate of 15% of the basic excise duty. This works out to Rs. 180 approximately. Thus, the total excise duty leviable on ''flats'' comes to about Rs. 1380 PMT. As against this, the basic excise duty leviable on ''Bars'' is at the rate of Rs. 800 PMT besides a special excise duty at the rate of 15% of the basic excise duty. It, thus, comes to a total of Rs. 920 PMT. It is, thus, obvious that there is a difference of Rs. 460 PMT in the excise duty leviable on the two products.

5. The petitioner avers that its product is described as ''Patti/Patra'' in the business parlance. It is classified as ''flats''. It is exigible to excise duty at the rate of Rs. 1380 PMT approximately. However, in view of the decision of the CEGAT which is pending consideration before the Apex Court the Department is wanting it to pay excise duty at the rate of Rs. 920 PMT. If the matter had rested here only, the petitioner would not have had any grievance. However, in spite of classifying the petitioner''s product as ''Bars'', the Department is wanting the petitioner to give an undertaking that in the event of the acceptance of the appeal filed by the Department by the Apex Court, the petitioner would have to pay extra excise duty. In other words, the petitioner is being called upon to give an undertaking to the Department to pay excise duty at the rate of approximately Rs. 460 PMT besides the excise duty which is being paid now after the decision of their Lordships of the Supreme Court. It is this action of the Department which the petitioner impugns through the present writ petition.

6. In the written statement filed on behalf of the respondents, it has been admitted that "incidence of duty at present is more on ''flats'' than ''Bars''." It is further averred that "the respondent-Department is of the view that product of the petitioner qualifies to be classified as ''flat''. However, in view of the CEGAT''s order dated 20-12-1990 holding the petitioner''s product as ''Bars'', the Department has no other alternative but to classify the product as ''Bars'' and to charge duty accordingly till the decision of the SLP dated 25-3-1991 filed by the respondent-Department in the Hon''ble Supreme Court against the CEGAT''s said

 

order dated 20-12-1990". It is on this basis the Department wants the petitioner to file the aforementioned undertaking.

7. I have heard Mr. H.S. Sawhney, learned counsel for the petitioners in all these cases as also learned counsel for the respondents. Mr. H.S. Sawhney submits that the petitioners are actually manufacturing ''flats'' and they are willing to pay the excise duty accordingly. However, if the petitioners are now called upon to pay the excise duty as specified for ''Bars'', they will not be able to charge anything beyond the excise duty actually paid from the customers. In the event of reversal of the decision of the CEGAT by their Lordships of the Supreme Court, the petitioners would become liable to pay extra duty at the rate of Rs. 460 PMT without their being able to recover it from the parties to whom the product may have been sold. This, the learned counsel submits is totally arbitrary and would virtually result in the closure of the mills set up by the petitioners. On the other hand Mr. G.B.S. Sodhi, learned counsel for the respondents submits that the Department has issued instructions with the sole object of complying with the decision of the CEGAT. According to the learned counsel, the product of the petitioner is classifiable as ''flats'' and is consequently exigible to excise duty specified for the product.

8. The petitioners face a real dilemma. Their product has been admittedly classified as ''flats''. They have been paying excise duty on that basis. Now they are being called upon to pay excise duty at a lesser rate on the premises that their product is classifiable as ''Bars''. If the petitioners do this, they would be able to bill their customers for the excise duty actually paid by them. Thereafter, in the event of the decision of the Tribunal being reversed by the Supreme Court, the Department would call upon the petitioners to pay Additional excise duty at the rate of Rs. 460 PMT approximately. Where from would the petitioners recover this amount? This may not be the botheration of the Department but it is bound to cause extreme hardship to the petitioners. A liability for substantial amounts may accrue against each one of the petitioners for no fault of theirs.

9. It is the admitted position that the petitioners were not parties in the case decided by the Tribunal. Consequently, the petitioners are not aware of the factual position as it existed in the case decided by the Tribunal. So far as these cases are concerned, the pleadings of the parties are clear. According to these pleadings, the petitioners are producing ''flats''. The product is, accordingly exigible to Basic Excise duty at the rate of 10 per cent ad valorem besides the special excise duty at the rate of 15 per cent of the basic excise duty. The petitioners are willing to pay the excise duty at this rate. This is higher than the rate of duty prescribed for the product classified as ''Bars''. Learned counsel for the petitioners further states that even if the appeal filed by the Department against the decision of the CEGAT is dismissed, the petitioners shall not claim any refund from the Department. In this situation, there should be no difficulty whatsoever with the Department in accepting the excise duty at a higher rate. The only result would be that the state exchequer would get more money and

 

the petitioners would be saved the avoidable botheration. It would not harm any of the parties.

10. Accordingly, it is held that the petitioners in these three writ petitions shall pay excise duty as is prescribed for the product - ''Flats'' and not for ''Bars''. Instructions issued by the Department calling upon them to pay excise duty leviable for ''Bars'' or for giving any undertaking cannot be sustained in view of the admitted position. The instructions are, accordingly, set aside.

11. The writ petitions are allowed. In the circumstances of these cases, there would be no order as to costs.

 