STEEL ROLLING MILLS OF BENGAL LTD. A

v.

UNION OF INDIA AND ORS. ETC.

OCTOBER 14, 1992

[S. RANGANATHAN, V. RAMASWAMI AND B.P. JEEVAN REDDY, JJ.] B

Central Excises and Salt Act, 1944/Central Excise Rules, 1944:

Sections 3, 35-L, Items 26AA of First Schedule/Rules 12, 12-A and Notification No. 197/62—Rebate on duty paid on the excisable goods exported—Whether admissible on duty paid on the raw material used in the furnished product. C

The appellants were carrying on business as rerollers of iron and steel products. They purchased billets from the stockyard of three major steel companies and either rolled or re-rolled these billets or got them rolled by other re-rollers into M.S. Flats (Hoops) and exported them on payment of central excise duty. The concessional rate of duty levied on billets was Rs. 330 per metric ton and on Flats Rs. 120 per metric ton. D

As and when appellants exported the said M.S. Flats (Hoops), they filed applications for rebate of duty on the goods so exported claiming full rebate of Rs. 450 per metric ton of Flats exported. 25 of such claims were allowed by the authorities. E

However, subsequently, on the ground that excessive rebate had been given and that the appellants were not entitled to rebate of duty of Rs. 330 per metric ton paid on the billets or that it was not admissible, the Collector of Central Excise passed orders demanding return of the excessive amount involved in 25 claims and reducing the claim for rebate in 21 cases and restricting the rebate to the sum of Rs. 120 per metric ton paid on M.S. Flats when the goods were cleared from the factories. On rejection of the appeals preferred against this order by the Central Board of Excise and Customs, the appellants preferred appeals to CEGAT. F G

The Tribunal held that rebate was admissible only in respect of the central excise duty paid on the finished products and not on the raw H

material going into the manufacture of finished products and, therefore, the claim had to be restricted to the actual amount of duty paid at the time of clearance of the finished products from the factories for export.

In the appeals before this court on behalf of the appellants it was contended that though excise duty at the rate of Rs. 120 per metric ton was paid on M.S. Flats at the time of the clearance from the factory, the effective rate of duty on the goods exported was Rs. 450 per metric ton, as duty at the rate of Rs. 330 per metric ton had been paid on the billets at the time of actual clearance of the billets from the producing factories, and that since the billets, which went into the manufacture of finished goods exported, had been purchased from the major steel plants, excise duty should be deemed to have been paid, and that the word 'paid' in the expression "the duty paid on excisable goods" should not be given restricted meaning and may be treated as a reference to whole duty paid by them on raw material and finished products.

Dismissing the appeals, this Court,

HELD: 1.1. The billets and flats fall under two entries in Item 26AA of the First Schedule to the Central Excises and Salt Act, 1944 and different rates are also provided. From Rule 12 and the Notification 197/62 dated 17.11.1962 issued thereunder, it is clear that the rebate is with respect to the duty "paid on the excisable goods" exported and to the extent of the duty actually paid at the time of clearance of those goods from the factory. The finished product, which was exported, is a distinct and separate excisable product from that of billets (raw meterial) used in the manufacture of the same. The rebate is with reference to the actual amount of the duty paid at the time of clearance of the finished products from the factory for export. [980-H; 981 A-E]

1.2. The meaning given for the word 'paid' in Rule 10 has no application in interpreting the words "duty paid on excisable goods" in Rule 12. Rule 10 deals with "short levy", whereas Rule 12, deals with rebate on duty paid. There cannot be any duty when the duty has not been paid.

[981-H; 982-A]

N.B. Sanjana, Asstt. Collector of Central Excise v. *The Elpinstone Spinning & Weaving Mills Ltd.*, (1978) 2 E.L.T. 399, distinguished.

1.3. In the absence of any notification under Rule 12(A), which

relates to rebate of duty on excisable materials used in manufacture of goods which are exported, the assessee cannot get rebate on the duty paid on the raw materials used in the manufactured goods under the notification made under Rule 12. Therefore, it makes no difference whether the billets had suffered any duty or not. [982 B-H]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3074 to 3116 of 1984.

From the Order dated 5.1.84 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal Nos. ED (SB) (T) No. 512/80-B & 2758 to 2799/83-B (Order Nos. 10 to 52/84-B).

AND

Civil Appeals Nos. 3368 to 3370 of 1984.

From the Order dated 5.1.84 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal Nos. ED(SB((T) Nos. 2834, 2835 and 2836/83B. (Order Nos. 53-55 of 1984-B).

M. Chandershekharan and H.K. Puri for the Appellants.

M. Gauri Shankar Murthi and Dileep Tandon for the Respondents.

The Judgment of the Court was delivered by

V. RAMASWAMI, J. These appeals under Section 35-L of the Central Excise and Salt Act, 1962 are filed against the orders of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (CEGAT) in order Nos. 10 to 55/84-B dated 5.1.1984. The appellants at all material times were carrying on business as re-rollers of iron and steel products. They purchased billets from the stockyard of Hindustan Steel Ltd., M/s Tata Iron & Steel Co. Ltd., and Indian Iron and Steel Co. Ltd. at Calcutta now known as Steel Authority of India Limited and either rolled these billets or got them rolled by other re-rollers into M.S. Flats (Hoops) and exported them on payment of proper central excise duty. The steel billets fall under Item 26 AA (i) and flats fall under 26 A (iii) of the First Schedule to the Central Excise and Salt Act, 1944. At all the relevant times it is stated that the concessional rate of duty levied on billets was Rs. 330 per metric ton and on flats Rs. 120 per metric ton. The appellants had

A exported M.S. Flats (Hoops) of a total quantity of 1168.750 metric tons on various dates. As and when they exported the said flats they filed applications for rebate of duty on the goods so exported claiming a total rebate at the rate of Rs. 450 per metric ton of flats exported on the ground that they are eligible for the full rebate of excise duty at the rate of Rs. 330 per B M.T. paid on the billets as also the duty of Rs. 120 per M.T. paid on the flats exported. 25 of such claims of the appellants for a total amount of Rs. 2,86,096.50 P. were sanctioned. On the ground that they had been given excessive rebates and that they are not entitled to the rebate of duty of Rs. 330 per metric ton paid on the billets or that it was inadmissible, 25 C show-cause notices were issued demanding the repayment of the amount calculated at Rs. 330 per metric ton equivalent to the duty on billets. In respect of the remaining 21 claims, notices were issued as to why their claims to the extent of Rs. 330 per metric ton should not be disallowed. After hearing the appellants the Collector passed the orders demanding the return of the excess amount involved in the 25 show-cause notices and D reducing the claim for rebate in the remaining 21 cases and restricting the rebate to the sum of Rs. 120 per metric ton paid on M.S. Flats when the goods were cleared from the factories. On rejection of the appeals preferred against these orders by the Central Board of Excise and Customs the appellants preferred appeals to CEGAT. After a consideration of the E relevant notifications allowing rebate and the arguments of the appellants, the Tribunal held that rebate is admissible only in respect of the central excise duty paid on the finished products and not on the raw material going into the manufacture of finished products and that therefore the claim has got to be restricted to the actual amount of duty paid at the time of F clearance of the finished products from the factory for export. It may however be mentioned that the Tribunal also expressed a view that the appellants had not factually proved the payment of excise duty on the billets purchased by them. Proof of payment was considered particularly in view of the fact that the duty on iron and steel products were being changed G or altered or modified very frequently.

In these appeals Mr. Chandrashekharan, the learned senior counsel appearing for the appellants contended that the rebate of duty paid on the "excisable goods" on the exportation out of India is admissible to the extent and subject to the conditions mentioned in Notification No. 197/62 dated H

17.11.1962. Though excise duty at the rate of Rs. 120 per metric ton on M.S. Flats were paid at the time of the clearance from the factory the effective rate of duty on the goods exported was Rs. 450 per metric ton as duty at the rate of Rs. 330 per metric ton have been paid on the billets at the time of actual clearance of the billets from the producing factories. He further contended since the billets which went into the manufacture of finished goods exported having purchased from the major steel plants, above referred to, excise duty shall be deemed to have been paid. He also contended that the appellants produced the invoices showing the payment of central excise duty on the billets at the appropriate rate before the Collector but the Collector wrongly refused these documents and also wrongly held that they do not establish payment of duty.

Rule 12 of the Central Excise Rules, 1944 provides that "the Central Government may, from time to time, by notification in the Official Gazette, grant rebate of duty paid on excisable goods, if exported outside India, to such extent, and subject to such safeguards, conditions and limitations as regards the class of goods, destination, mode of transport, and other allied matters as may be specified therein ..." In exercise of this power Notification No. 197/62 dated 17.11.1962 was published. The relevant portion of the Notification is extracted below:

> "Procedure for grant of rebate of the excise duty paid on excisable goods and exported out of India. In exercise of the powers conferred by Rule 12 of the Central Excise Rules, 1944, as in force in India and as applied to the State of Pondicherry, the Central Government is pleased to direct that, in supersession of the Notifications of the Government of India in the Ministry of Finance (Department of Revenue) No. 10-Central Excises, dated the 5th April, 1949, No. 45 Central Excise, dated the 5th April, 1949 and No. 47/54, Central Excises, dated the Ist November, 1954, rebate of the duty paid on the excisable goods specified in the Table annexed hereto shall, on their exportation out of India, or the State of Pondicherry, as the case may be, to the destinations mentioned in column 3 thereof, be made to the extent and subject to the conditions and limitations, if any, set out in the corresponding entries in columns 4 and 5:

A Provided that-

(i) expect as otherwise provided in the said Table or permitted by the Central Board of Revenue by general or special order, the goods are exported after payment of duty in cash direct from a factory or a warehouse;

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(ii) x x x

(iii) the amount of duty paid on the goods to be exported and the date of payment thereof, are established, from Central Excise records, to the satisfaction of the Collector...."

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"Table

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Sr. No.	Excisable goods	Destination	Extent of rebate	Limitation and conditions pertaining to particular excisable goods
xxx				
7A	Iron or steel products falling under Item No. 26AA of the First Schedule to the Central Excises and Salt Act, 1944.	Any country or territory outside the India excluding Nepal, Bhutan and Sikkim.	the whole	The rebate specified in column 4 shall not apply to any article in respect of which rebate of duty is allowed under the First Schedule to the Customs and Central Excise Duties Export Drawback (General) Rules, 1960 or under the Notification of Govt. of India in the Ministry of Finance (Department of Revenue) No. 215/62 Central Excises, dated the 15th Dec., 1962.
	xxx"			

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We have already noticed that billets and flats fall under two different entries in Item 26 AA of the First Schedule to the Central Excise and Salt

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Act, 1944 and different rates are also provided. It may be seen from Rule 12 and the Notification 197/62 that the rebate is with respect to the duty "paid on the excisable goods" exported and the rebate is to the extent of the duty actually paid at the time of clearance of those goods from the factory. The finished product which was exported is a distinct and separate excisable product from that of billets (raw material) used in the manufacture of the same. Under the Notification No. 153/77 dated 18.6.1977 issued under Rule 8 where products mentioned in the table to the Notification are made from the semi-finished steel on which duty at the appropriate rate has already been paid, the duty specified in the corresponding entry in column 3 of the said table shall be reduced by Rs. 330 per metric ton. Serial No. 4(a) in the Table to this Notification shows that the rate of duty at that time on the flats now in question was Rs. 450 per metric ton. But in view of the proviso the actual rate of duty payable on M.S. Flats was fixed at Rs. 120 per metric ton. However, this in our view does not mean that the finished products are not different excisable commodity or that the duty paid on the excisable commodity exported include the duty paid on billets or that the effective rate was Rs. 450 per metric ton. On the other hand the Notification being one under Rule 8 M.S. Flats shall be deemed to have been "exempted" from payment of part of the duty leviable, thereby clearly establishing that M.S. flats is a completely different excisable product and the rate of duty payable was Rs. 120 per metric ton. The rebate is with reference to the actual amount of the duty paid at the time of clearance of the finished products from the factory for export.

Though under the Notification 197/62 the rebate is of "the duty paid on the excisable goods", the learned counsel for the appellant argued that the word 'paid' shall not be given a restricted meaning and may be treated as a reference to whole duty paid both on raw material and finished products. In this connection he referred to the decision in *N.B. Sanjana, Asstt. Collector of Central Excise* v. *The Elpinstone Spinning & Weaving Mills Ltd.* (1978) 2 E.L.T. 399. In this decision in interpreting the expression "short levied" and "paid" in Rule 10 as it stood prior to 6.8.77, this Court held that in the context in which the word "paid" is used in Rule 10 the proper interpretation to be placed on the expression 'paid' or "ought to have been paid". We have no doubt that the meaning given for the word 'paid' in Rule 10 has no application in interpreting the words "duty paid on excisable goods" in Rule 12. Rule 10 deals with 'short levy' and, therefore, it was argued that the Rule will not apply to a case where it was

A a case of nil assessment. Repelling this contention this Court held that the expression "short levy" will include nil levy and the word 'paid' in the context Rule 10 would also include "ought to have been paid". Rule 12 on the other hand deals with rebate of duty paid. There cannot be any rebate when duty has not been paid.

B We may also note Rule 12A in this connection. That Rule relates to rebate of duty on excisable materials used in the manufacture of goods which are exported. Sub Rule 2 of this Rule reads:

> "Rule 12A (2) Where it appears to the Central Government that, in the case of goods of any class or description manufactured, in, and exported from, India or the State of Pondicherry, or shipped as provisions or stores for use on board a ship proceeding to a foreign port, a rebate should be allowed of duties of excise chargeable under the Act in respect of any material of a class or description used in the manufacture of such goods, the Central Government may, by notification in the Official Gazette, direct that a rebate shall be allowed in respect of such goods subject to such conditions and limitations as regards the class and description of goods, class and description of materials used for the manufacture thereof, destination, mode of transport, and other allied matters as may be specified in the notification:
>
> Provided that no such rebate of duty in respect of excisable materials used in the manufacture of goods exported out of India shall be allowed, if the exporter avails of drawback allowed under the Customs and Central Excise Duties Export Drawback (General) Rules, 1960, in respect of such duty."

C D E F

G The learned counsel had not relied on any notification issued under this Rule for claiming rebate on the duty paid on the raw materials used in the manufacture goods exported. In the absence of any Notification under Rule 12A the assessee cannot get that relief under the Notification made under Rule 12. In this view it make no difference whether the billets had suffered H any duty or not.

In the result, there are no grounds to interfere with the orders of the Tribunal and accordingly these appeals fail and are dismissed but there will be no orders as to costs. A

N.P.V. Appeals dismissed.