Steel Authority Of India Ltd vs Collector Of Central Excise, Bolpur on 20 February, 1997

Equivalent citations: AIRONLINE 1997 SC 602, AIRONLINE 1997 SC 328, AIRONLINE 1997 SC 604

Author: S.B. Majmudar

Bench: S.B. Majmudar

PETITIONER:
STEEL AUTHORITY OF INDIA LTD.

Vs.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE, BOLPUR.

DATE OF JUDGMENT: 20/02/1997

BENCH:
S.B. MAJMUDAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S.B. Mujmudar. J.

This appeal under Section 35(L) of the Central Excise & Salt Act, 1994 (hereinafter referred to as `the Act') is brought by the appellant-assessee on being aggrieved by the decision rendered by the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT for short) dismissing the assessee's appeal against the order in original passed by the Collector of Central Excise, Bolpur.

A few relevant facts leading to this appeal deserve to be noted at the outset. The appellant, Steel Authority of India Ltd. is a wholly owned Government of India Company. The appellant-company has several steel plants and Durgapur Steel Plant (DSP), situated at Durgapur in West Bengal, is one of the integrated steel plants of the appellant-company. DSP manufactures pig iron, steel ingots and

several steel products. These products of DSP prior to 1983 were classified under the erstwhile Tariff Items 25, 26 and 26AA. The appellant-company has been paying excise duty on these items under reference following the principles of "later the better". The appropriate central excise duty was determined and paid on iron and steel products, when cleared. The evidence led by the appellant explained the process of production. That in the integrated steel plant of the appellant-company at Durgapur the process of production is as under|-

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Iron ore
Sinter
Limestone                          put into Blast
Manganese Ore                      Furnace
Dolamite
BHQ
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Molten iron is produced in the blast furnace. Molten iron goes to steel furnaces of steel melting shop (SMS) directly and other ingredients are mixed. The product from SMS is steel. In other words, iron is converted into steel in SMS. Raw materials like iron ore, sinter, coke limestone etc. are fed into blast furnace which produces pig iron. At this stage, the molten metal is called pig iron. Once this molten metal is fed into steel making furnace which produces steel, the produce which comes out, out of the steel melting shop (SMS) is known as steel and not iron and will fall into Tariff Item 26. It is only when the steel ingots are further processed and the various products like structurals, rails, wire-rods, etc. are produced, they would come under Tariff Item 26AA. According to the appellant, the steel melting scrap is specifically covered under Tariff Item 26 and once a produce comes out of SMS, it is known as steel and not iron. In the process of production of steel at SMS, some scrap arises which is known in the industry as `steel melting scrap'. While most of this steel melting scrap is captively consumed by DSP itself, a small portion is also sold to other steel plants manufacturing steel ingots, steel casting and semi-finished steel with the aid of electric furnace. The procedure set out in Chapter X of the Central Excise Rules, 1994 is followed while selling the steel melting scrap which is cleared at nil rate of duty.

It is the case of the appellant-company that the clearance of steel melting scrap was being done in accordance with Chapter X of the Central Excise Rules and the said Clearance was governed by the terms of Notification No.150/77 dated 18.6.1977 as amended by Notification No.209/77 dated 2.7.1977. This practice of removal of steel melting scrap as per the procedure laid down by the aforesaid notification was being followed by the appellant- company since the date of the said notification i.e. 18.6.1977.

The facts leading to the present proceedings stem out of the show cause notices issued to the appellant-company by the Superintendent of Central Excise, Durgapur. The first show cause notice dated 21.11.1980 alleged that the appellant-company had not paid duty on the iron contained in crude form in `steel melting scrap'. It was alleged in the said show cause notice that as per Tariff Item 25 iron in crude form attracted central excise duty @ Rs.70/- per metric ton and there was no clear exemption from payment of duty on iron used for manufacturing of steel ingots and steel melting scrap. That Notification No. 18/71-CE dated

27..3.1971 provided a set off of duty paid on iron in crude form against the duty payable on steel ingots and steel melting scrap. It was further alleged in the show case notice that since specified steel melting scrap chargeable to nil rate of duty, the question of set off of duty on steel melting scrap cleared without payment of duty, was chargeable. The aforesaid notice was in respect of the period from 12.12.1977 to 30.9.1980. On similar terms another demand notice was issued for the period from April 1981 to October 1981. The total duty so demanded was about Rs.25.50 lakhs. The appellant-company submitted replies to the said show cause notices and pointed out that the notices were misconceived and the demands raised were not sustainable. The Collector of Central Excise by his order in original dated 9.6.1987 confirmed the demand of Rs.25,50,593.87 on iron in crude form used by the appellant- company in manufacture of 34,346.327 metric tons of steel melting scrap which had been cleared without payment of duty.

The appellant-company being aggrieved by the aforesaid order of Collector of Central Excise, Bolpur, carried the matter in appeal before the CEGAT, New Delhi. The said appeal was partly allowed by the CEGAT by its order dated 21.12.1990 whereby the CEGAT quashed the demands in respect of the period prior to 6 months of the issue of the respective show cause notices dated 21.11.1980 and 23.11.1981 on the ground that for earlier period notices were time barred. However, the CEGAT upheld the demand of the department for duty for the period of 6 months computed backward from the dates of the respective show cause notices. As per the aforesaid order of the CEGAT, total demands covered by both the notices worded out to about Rs.6 lakhs. It is the aforesaid order of the CEGAT that has been brought on the anvil of scrutiny of this Court in the present appeal.

RIVAL CONTENTIONS :

> Learned counsel for the appellant in support of the appeal submitted that the CEGAT had patently erred in upholding the demands for duty payable on iron in crude form which had already resulted into duty paid steel ingots manufactured by the appellant out of the said crude iron. That steel melting scrap which resulted in the process of manufacture of steel ingots from crude iron was purely a by- product which was already exempted and bore nil duty on account of Notification dated 18.6.1977 being Notification No.150/77. That integrated steel plant like DSP was meant to produce pig iron and various steel products but not scrap. Scrap was not a conscious production. That the iron in crude form which had not borne duty at the time of its production had already resulted in the manufacture of duty paid steel ingots. Even in the light of Notification No.18/71-CE dated 23.3.1971 full excise duty was paid by the appellant-company on the steel ingots which were the ultimate product manufactured by the appellant by utilising the entire input of iron in crude form. Hence, even if set off of duty on utilised iron crude form was not available as duty was not paid at the relevant time when iron in crude form was manufactured, save and except demanding full duty on manufactured steel ingots, there would remain no occasion for the revenue to bring to tax the very same utilised iron in crude form which during the process of manufacture of the final product of steel ingots might have resulted in a by-

product like steel melting scrap which in its turn was fully exempted from the excise duty because of Notification No. 150/77. According to the learned counsel for the appellant, the impugned notices of demand and the final order of adjudication even for a period of six months immediately preceding the impugned show cause notices were ex facie unauthorised and not sustainable in law.

Learned counsel for the revenue, on the other hand, submitted that at the time when the input of crude iron i.e. pig iron was produced, no duty was paid by the appellant. The said input was utilised by the appellant for manufacturing two excisable items, namely, (i) steel ingots and (ii) steel melting scrap though an excisable item, did not bear any duty in view of the exemption Notification No.150/77. Consequently, the input of pig iron to the extent to which it resulted into the final product of steel melting scrap remained liable to pay excise duty as no final duty on steel melting scrap was available for proportionately setting off duty payable on the input to the extent of which it had resulted in the manufacture of steel melting scrap. It was submitted that steel melting scrap was itself an excisable item which had a market of its own and was not like a by-product which had no value whatsoever and was not exigible to central excise. Consequently, when the final product of steel melting scrap had not borne excise duty because of the exemption notification, as aforesaid, the non-duty paid input which was embedded in it, which in its turn was exigible to tax had to be brought tax when the final product steel melting scrap got cleared and that is precisely what the demand notices sought to do and hence the adjudication order was correctly passed by the CEGAT.

Having given our anxious consideration to the rival contentions, we find that the CEGAT has patently erred in sustaining the impugned demands of excise duty even for the period of six months prior to the dates of respective show cause notices. At the outset, we may note that it is not in dispute between the parties that the appellant which is a wholly owned Government of India company, in the process of manufacturing the final product at its Durgapur Steel Plant produces as an input for captive consumption molten metal called pig iron. This pig iron as an input results in manufacture of two excisable commodities, namely, steel ingot as well as melting scrap. We may, for the purpose of the present proceedings, proceed on the basis that steel melting scrap which gets manufactured is an excisable commodity and has its own market if not captively consumed. However, the moot question remains as to whether the input of pig iron ultimately bears full burden of excise duty as leviable on the said pig iron at a stage when the said input results into the final product. We may note at this stage that at the relevant time, the tariff, item concerned which made the input of pig iron exigible to excise duty was Tariff Item 25 and rate of duty was Rs.70/- per metric ton. The final products which resulted by utilising this input, as noted above, were steel ingots as well as steel melting scrap. Both of them were covered by Tariff Item 26 and were liable to tax @ Rs.350/- per metric ton. There was Tariff Item 26AA which dealt with iron or steel products which were manufactured by utilising steel melting scrap as an input by the appellant-company and those steel products enumerated in the said Entry 26AA were of various types and were liable to bear excise duty as mentioned in the said tariff item. The short question for our consideration is whether pig iron in crude form which was utilised as an input by the appellant- company in manufacturing the final products of steel ingots and steel melting scrap had been subjected to full payment of excise duty under Tariff Item 25, if not at an earlier stage when it was manufactured, it least at a latter stage when it got embedded in steel melting ingots and steel melting scrap. It has to be appreciated that it is not the case of the department not is there anything on record to indicate

that out of the input of crude iron or pig iron, a particular portion thereof was separately utilised by the appellant as an input for manufacturing steel ingots was in uniform, composite and a combined process and in the said process of manufacturing steel melting scrap. In fact the entire process of manufacturing steel ingots was a uniform, composite and a combined process and in the said process of manufacturing of steel ingots the entire input of crude iron got exhausted and utilised but in the very same process two commodities emerged, namely, steel ingot and steel melting scrap. There is a substance in the contention of the learned counsel for the appellant that the integrated steel plant like DSP owned by the appellant was meant to produce pig iron and various steel products. However, the process was such that certain amount of scrap arises due to technological necessity and it was not a conscious production and, still it might be excise duty under the concerned Tariff Item 26. We are not concerned in the present proceedings with the taxability of the final product, the steel melting scrap, as admittedly the said steel melting scrap as a final product is not liable to pay any liable duty and is exigible to nil duty on account of exemption Notification no.150/77 dated 1.6.1977. It is not in dispute between the parties that steel melting scrap which is the final by-product in the process of manufacture of steel ingots undertaken by the appellant by utilising the input of pig iron has earned full exemption from payment of excise duty under the aforesaid notification. In fact, that is the very basis of the show cause notices. The department accepts that steel melting scrap is not liable to pay any excise duty but its contention is that the proportionate input of pig iron which was embedded in the said field final product and which by itself did not bear any duty earlier though it was liable to pay duty under Tariff Item 25 had escaped excise duty thereon. If that is so, the question remains whether the remaining and the main final product, namely, steel ingot, which was exigible to central excise as per Tariff Item 26 @ Rs.350/- per metric ton and which had utilised the same input of crude iron, namely, pig iron could be said to have accounted for payment of excise duty on input of crude iron which was fully utilised by it when it got manufactured in the steel melting furnace as a result of the same and uniform manufacturing process. The basis of the impugned show cause notices which in their turn got upheld by the CEGAT to the extent of six months demands prior to the dates of issue of these notices, being Notification No.18/71 dated 27.3.1971 is, therefore, required to be reproduced. The said notification reads as under|-

> "18/71-CE dt. 27.3.71: In exercise as of the powers conferred by Rule. 8(1) of the Central Excise Rules, 1994, and in supersesion of the notification of the Government of India in the M.F.(D.R.& I) No.67/78-CE dt.
>
> 30.3.68, the Central Government hereby exempts :
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> (a) steel ingots falling under Item No.25 of the First Schedule to the Central Excise and Salt Act, 1944 (1 of 1944), and
>
> (b) iron and steel products falling under Item No.26AA of the First Schedule in which duty paid iron in any crude form, including pig iron, scrap iron, molten iron or iron cast in any other shape or size, is used, from so much of the duty as is proved to have been paid on the said iron in any crude form;

(Provided that in relation to the exemption under this notification the procedure set out the Rule 56A of the aforesaid rules is followed)."

Now a mere look at the aforesaid notification shows that it seeks to permit a set off of excise duty payable on the final product manufactured by the appellant by utilising the input of pig iron to the extent of the amount of excise duty which might have been paid by the assessee on the utilised input of pig which ultimately resulted resulted into the final products. Those final products are either steel ingots covered by Tariff Item 26AA. It is pertinent to observe that the said exemption/set off notification does not cover final product of steel melting scrap mentioned in Tariff Item 26 which obviously results as an unplanned by- product. Learned counsel for the respondent is right when he contends that on the facts of the present case, the benefit of the set off of excise duty payable on pig iron would not be available to the appellant so far as its liability to pay excise duty on the finished products was concerned as the input of pig iron which emerging by-product of steel melting scrap. In the absence of such bifurcation, the impugned notices would obviously result in double taxation on the input of pig iron which embedded in steel ingots that became liable to bear full excise duty and for which there is no dispute between the parties. As the process for manufacturing steel ingots by utilising the input of crude iron was a single uniform process, such birfurcation even otherwise was not possible even if it was so attempted by the respondent-department. The impugned show cause notices make clear, in this connection, that they seek to levy basic excise duty for the relevant period on the entire input of pig iron by seeking to bring it to tax on the basis of the entire output of steel melting scrap. In other words notices seek to equate total quantity of steel melting scrap with the embedded proportionate input of pig iron. This is clearly impermissible. It is obvious that steel melting scrap, as a final product, is exigible to nil rate of duty as there is no dispute between the parties that it is fully covered by exemption Notification No. 150/77 dated 18.6.1997. In fact, that is the very basis for the impugned notices, as seen earlier. If that is so, the impugned notices indirectly seek to bring to tax the entire quantity of steel melting scrap resulted into steel ingots had not already borne the excise duty under Tariff Item 25 at the time when it was manufactured. But the said fact does not improve the case of the respondent-department any further. The reason is obvious. Even though such set off from duty payable on steel ingots as finished product @ Rs.350/- per metric ton as per Tariff Item 26 might not be available to the appellant-company, still the entire input of pig iron which got utilised by the appellant in manufacturing steel ingots got reflected in the full and final duty payable by the appellant on the final product, which namely, steel ingots. All that resulted was the deferred payment of excise duty @ Rs.350/- per metric ton without any set off. That was the only logical effect of the non-availability of the benefits of Notification No.18/71 dated 27.3.1971. In the absence of relevant data being available or even tried to be produced by the respondent-department on the record of this case, it is impossible to bifurcate and try to find out as to what part of the input of pig iron resulted into the manufacturing of steel ingots and what part of the very same input of pig iron got embedded in the by treating it to be resulting from the total input of pig iron, which directly could not have been brought to tax. Once entire quantity of steel melting scarp is exempted from excise duty as per Notification of 18.6.1977, it is difficult to appreciate how the very same quantity of scarp can be taken as a basis for levying tax on input of pig iron embedded therein when admittedly a substantial part of the very same input had resulted in a different duty paid product, namely steel ingots and for manufacturing the same substantial quantity of pig iron had stood utilised.

The moot question that survives for our consideration is as to whether the input of pig iron which itself was an exigible commodity as per Tariff Item 25 had been subjected to the requisite excise duty by way of deferred payment of duty not at the time of manufacture of crude iron but at the time when it got embedded in the final product of steel ingots. In order to answer this question, we may take a single illustration. Let us assume that 100 metric tons of iron in crude form i.e. pig iron manufactured by the appellant at a given point of time which was being utilised by it in the uniform manufacturing process for ultimately producing the steel ingots out of it. As per Tariff Item 25 the rate of excise duty was Rs.70/- per metric ton on pig iron. Therefore, 100 metric ton of pig iron when manufactured would have been liable to pay excise duty of Rs.7,000/-. would have been available to the appellant to be adjusted against the final product, namely, the steel ingot was cleared by it. For the purpose of this illustration, let us assume that by utilising 100 metric tons of pig iron, 90 metric tons of steel ingot and 10 metric tons of steel melting scarp emerged. So far as 10 metric tons of scarp was concerned, it was not exigible to excise duty payable thereon as per Tariff Item 26 was Rs. 350/- per metric ton. Therefore, accordingly 90 metric tons of steel ingots would have been required to bear total excise duty of Rs.31,500/- (90 metric tons x Rs.350/-). Towards this total liability of Rs. 31,500/- of excise duty on the final product of the steel ingots, the appellant would have been entitled to a set off Rs.7,000/- in all as it had utilised 100 metric tons of pig iron as input for manufacturing this 90 metric tons of steel ingots especially in the absence of there being any bifurcation of the input of pig iron between the final emerging products, namely, 90 metric tons of steel ingots on the one hand and 10 metric tons of steel scarp on the other. But that would have been possible if the input of 100 metric tons of pig iron had already been subjected to payment of excise duty at the time of clearance for captive consumption. Then in that case the net duty liability on 90 metric tons of steel ingots would have been Rs.24,500/- only (Rs.31,500- Rs.7,000/-). However, the set off of Rs. 7,000/- in all is not available to the appellant on the excise duty payable on 90 metric tons of steel ingots as at the relevant time when the input of pig iron was manufactured, the same had admittedly not borne any duty and the payment of duty was deferred. Therefore the notification No.18/71 dated 23.3.1971 could not be of any avail to the appellant. The net result was that the appellant had to pay the full duty of Rs.31,500/- on the 90 metric tons of steel ingots which had utilised non-duty paid 100 metric tons of pig iron. In the process the appellant accounted for full duty payable on steel ingots of 90 metric tons i.e. Rs.24,500/- and also accounted for full duty on the input of 100 metric tons of pig iron i.e. Rs.7,000/-. A conjoint operation of Notification No.18/71 dated 23.7.1971 and Tariff item 26, therefore, projects the following picture. Excise duty payable on final output of steel ingots would work out to Rs.350/- per metric ton consisting of Rs. 70/- per metric ton being the duty on the embedded input of pig iron had suffered the octroi duty at the time of its clearance for captive consumption, the appellant would have been required to pay only Rs.280/- per metric ton as excise duty on the final product of steel ingots. On the other hand, if input of pig iron had not borne such duty on its clearance for captive consumption, and the duty thereon was deferred, the steel ingots on clearance would bear full bear duty Rs.350/- per metric ton which in its turn would result in deferred payment of excise duty on input of pig iron on Rs. 70/- per metric ton. Thus as per the illustration under consideration, if the Notification No.18/71 dated 23.3.1971 operated in the field, the department would have got Rs. 7000/- by way of excise duty on the manufacture of input of pig iron of 100 metric tons when it was cleared for captive consumption and it would have got excise duty of Rs.24,500/- on 90 metric tons of steel ingots in the light of the set off permissible under the said Notification i.e. in all Rs.31,500/-.

If the benefit of the said notification was not available . As a matter of fact it is not available as the input of 100 metric tons pig iron had not borne any duty at the relevant time and the department had permitted the appellant to adjust it ultimately at the stage of manufacture of final product of 90 metric tons steel ingots which utilised the entire 100 metric tons of pig iron for its production, in the absence of separate bifurcation, the net result would still remain the same. Full excise duty of Rs.31,500/- on 90 metric tons of steel ingots @ Rs.350/- per metric ton without giving any benefit of adjustment would become available to the department. In either case, the appellant would be out of pocket to the requisite amount of Rs. 31,500/- by way of excise duty which would fully meet the department's demand of the full excise duty of Rs. 7000/- payable on the total input of 100 metric tons of pig iron. When the amount of excise duty so recovered on 90 metric tons of steel ingots which had exhausted the entire pig iron, accounted for fully duty on the entire quantity of input of pig iron, it is difficult to appreciate as to how the very same quantity of 100 metric tons of pig iron as input can again be subjected to excise duty because a further unintended product of 10 metric tons of steel scarp also resulted from the very same process of manufacture undertaken by the appellant in its steel making furnace. Consequently, it must be held that the impugned demands of excise duty twice on the input of pig iron utilised by the appellant in manufacturing the final product of steel ingots and which in the same process as a by-product of steel ingots and which was fully exempted from excise duty on account of the concerned exemption notification.

In this connection, we may note that the reasoning of the CEGAT as noted in paragraph 7 of the impugned judgment is clearly unsustainable. The CEGAT has observed that in this case steel melting scarp falling under Tariff Item 26 has been cleared without paying the duty or following the procedure of Chapter X as stipulated in Notification No. 150/77 dated 18.6.1977. It has been further observed that the department was justified in recovering duty at the stage prior to the last stage as in the last stage the produce, i.e. steel melting scarp is subject to nil rate of duty. With respect, the error committed by the CEGAT is to the effect that it had failed to appreciate that though duty on the input of pig iron at prior stage was not paid, whole of that duty got paid on clearance of steel ingots which were the main final product and the emergence of a minor by- product like steel melting scarp which might have been cleared on payment of nil duty had no impact whatsoever for enabling the department to once again bring to tax the same input of pig iron.

We may also note that the reliance placed by the learned counsel for the appellant on two decisions of this Court in M/S Swadeshi Polytex Ltd. vs. Collector of Central Excise[(1990) 2 SCC 358] and in Union of India & Ors. etc. vs. Indian Aluminium Co. Ltd. etc. [(1995) Supp. (2) SCC 465] may not be strictly apposite on the facts of the present case as the by-products which were dealt with in these cases were not excisable goods at all and had no independent market. In the present case even according to the appellant steel melting scarp had a market value and was capable of being sold outside if not captively consumed by the appellant. In ground no.(v) B in the memo. of appeal the appellant in this connection, has averred as under|-

> " Because Steel Melting scarp was exempted in terms of Notification No.150/77 dated 18.6.1977 upon conditions mentioned therein. The conditions having been fulfilled, no central excise duty can be determined or demanded, on the said `steel melting scarp' when sold to the steel plants following the Chapter X procedure."

It, therefore, cannot be urged by the learned counsel for the appellant that steel melting scalp was not an excisable commodity or that it could not be sold in the market. Consequently, the aforesaid decisions cannot be pressed in service by the appellant in the present case. However as discussed earlier the impugned demand of duty on the supposed embedded input of pig iron which resulted into the steel melting scarp were clearly unauthorised and incompetent. The appellant is entitled to succeed on this ground alone. In the result, the appeal is allowed, the judgment and order of the CEGAT is set aside, the impugned demands pursuant to both the notices dated 21.11.1980 and 23.11.1981 and the consequential adjudication thereon as confirmed by the CEGAT are quashed and set aside. The question of refund of Rs. six lakhs deposited by the appellant pursuant to the order of the CEGAT will have to be processed by the Collector of Central Excise, Bolpur in accordance with law and in the light of the decision of this Court in Mafatlal Industries Ltd. vs. Union of India (1977 ELT 247). The proceedings for this aforesaid limited purpose will stand restored to the file of the Collector, Central Excise, Bolpur. Ordered accordingly. In the facts and circumstances of the case, there will be no order as to costs.