Customs, Excise and Gold Tribunal - Delhi
Apex Steels (P) Ltd. vs Collector Of Central Excise on 23 March, 1995
Equivalent citations: 1995 (80) ELT 368 Tri Del
ORDER S.L. Peeran, Member (J)

1. All the above captioned appeals raise a common question, arising from same set of facts and circumstances and hence they are all clubbed for a common hearing and disposal as per law.

2. In all these appeals, the appellants have been issued with show cause notice during the year 1990 demanding various amounts of excise duty, and in all the cases mostly for the period from 20-5-1988 to 27-6-1989 in respect of manufacture and clearance of 'CTD bars twisted after hot rolling' (popularly known as "Tor Steel" in trade parlance, without due observance of the provisions of Central Excises and Salt Act, 1944 and its Rules, with regard to obtaining licence, filing classification list etc. The Department, as usual, alleging contravention of the provisions of Rules 9(1), 52(A), 53 read with Rule 226, Rules 173B, 173F, 173G, 174 of Central Excise Rules, 1944. The Department has stated that the said goods are classifiable under Chapter sub-heading 7214.90 of Central Excise Tariff Act, 1985; which reads as follows :

"72.14. Other bars and rods of iron or non-alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extruded but including, those twisted after rolling.

7214.10	- Forged
7214.20	- of free-cutting steel
7214.90	- Other"

2. (i) The appellants do not denty the production of this product but have taken a stand that the process of conversion of hot rolled Bars which are allowed to cool and thereafter, it is twisted on the twisting machine, and thus such an activity does not amount to the process of manufacture and that no new commodity or separate goods arisies, notwithstanding the fact that the product is known as CTD Bar or by the trade name TOR STEEL; which are used in reinforced concrete. It is their plea that

(ii) The process of twisting is merely a finishing operation and not a manufacturing operation.

(iii) It is stated by them that prior to 1-8-1983, the product fell under Tariff Item 26AA - Iron or steel products. The Tariff sub-item 26AA(ia) read as it stood as follows :

"(ia) Bars, rods, coils, wires, joists, girders, angles, other than slotted angles, channels, other than slotted channels, tees, beams, zeds, trough, piling and all other rolled, forged or extruded shapes and sections, not otherwise specified."

(iv) It is stated that in this description, there is no distinction as to whether the bar could be twisted or not Thus, the CTD Bars were classified under Item 26AA(ia) only. It is stated that the Central Board of Excise & Customs had also issued a Tariff Advice No. 50/78, dated 13-9-1978 clarifying that twisted steel rods used in reinforced concrete would be classifiable as rods under Item 26AA(ia). It was further clarified in the said Tariff Advice that if these were made out of duty paid steel rods, then they would not be subjected to excise duty again under Item No. 26AA(ia). It is further stated that from 1-3-1975, a new Tariff Item No. 68 was introduced dealing with all other goods not elsewhere specified. Then a question arose as to whether the CTD Bars could fall under Tariff Item 68 or not. Therefore, the Central Board of Excise & Customs in their letter dated 23-9-1975, clarified that cold twisted steel bars made by twisting of bars (either plain or ribbed) by machines were covered by Tariff Item 26AA and hence they do not fall under Tariff Item 68. Therefore, the appellants had submitted that CTD Bars were not subjected to any duty.

3. It is further stated that from 1-8-1983, the Tariff Items 25, 26 & 26AA was merged and a new Tariff Item 25 was introduced. In sub-item (9) of Tariff Item 25, bars and rods were covered. The CTD Bars were brought under Item No. 25(9)(ii). It is also stated that Notification No. 208/83-C.E. was also issued exempting goods falling under sub-item 9(ii), if manufactured from goods falling under sub-items 6(ii) & (iii), 7(ii), 8, 9(ii) and 11 of the said Item. It is pleaded that this notification clearly states that the condition for availing the exemption is that no credit of the duty paid on the inputs should have been taken under Rule 56A. It had also mentioned that all the stocks of inputs in the country are deemed to have been duty paid.

4. It is stated that from 1-3-1986, the Central Excise Tariff Act was introduced. Chapters 72 & 73 of the Tariff was identical to the earlier Tariff Item 25. Hence, the Government had continued with the Notification No. 208/83. That the description of the erstwhile Tariff Item 25(9) was identical to Tariff Heading 72.09 of the Central Excise Tariff Act, 1985. Consequently, a simple amendment was effected to Notification No. 208/83 inasmuch as instead of Tariff Item 25(9)(ii), Heading No. 7209.90 was substituted.

5. It is stated that from 1-3-1988, the metal chapters falling under Section XV of the Central Excise Tariff Act, 1985 was fully aligned with the HSN. Consequently, the bars and rods, hitherto covered under Heading 72.09 were spread over three Headings viz. 72.13, 72.14 and 72.15. Consequent to the realignment of the Tariff, Notification No. 208/83 was superseded and in its place Notification No. 90/88, dated 1-3-1988 was issued. It is stated even after the issue of Notification No. 90/88, dated 1-3-1988, the benefit of exemption was continued i.e. no duty was charged on the CTD Bars, as also known Tor Steel. This Notification was superseded by Notification No. 202/88-C.E., dated 20-5-1988. In this Notification, the description of inputs and final products for the aforesaid items was as hereunder :

Input	:	"Bars and rods of (i) iron, (ii) Non-alloy steel, (iii) stainless steel and other alloy steel.
Final products	:	"Bars and rods of iron, non-alloy steel, stainless steel and other alloy steel, not further worked than hot rolled, hot drawn or hot extruded or cold rolled or cold formed/cold finished (excluding bars and rods plated or coated with zinc and other base metals)".

It is stated that the specification of the inputs has undergone a change in that a comprehensive definition of bars and rods has been used. Similarly in respect of the final products a comprehensive definition taking into account all the three Headings viz. 72.13, 72.14 and 72.15 has been given. In other words the bars and rods which are specified under Headings 72.13, 72.14, 72.15 are covered by the description given in the column final products except for the exclusion viz. plated or coated with zinc and other base metals. It is also stated that the effective rate of duty on the bars/rods in question over the years, irrespective of various tariff headings did not undergo any change. It is stated that after 1-8-1983, the tariff rate was Rs. 400/- per MT. However, the effective rate of duty was Rs. 330/- per MT in terms of Notification No. 209/83-C.E., dated 1-8-1983. When this Notification was superseded by Notification No. 62/85-C.E., dated 17-3-1985, the rate of duty was Rs. 365/- per MT. It is further stated that since 1-3-1988, when the tariff was aligned with HSN, for the bars and rods falling under 72.13, the rate of duty was Rs. 400/- for the rods in question falling under 7214.90, it was Rs. 400/- per tonne and for other bars and rods falling under 7215.90, it was also same as Rs. 400/- per MT. It is stated that the effective rate of duty for these items continued to be Rs. 365/- per MT in terms of Notification No. 89/88. It is further stated that the Finance Bill which brought in structural changes became an Act on 13-5-1988. Therefore, the effective rates of duty as per Notification No. 160/88-C.E., dated 13th May, 1988 was continued at Rs. 365/- per M. It is stated that by Finance Bill of 1989 i.e. from 1-3-1989, the tariff rates for many of the headings were increased. For the bars and rods falling under 7213, 7214.90 (the CTD Bars), 7215.10, 7215.20 and 7215.90 which are referred to in the Notification No. 202/88, the tariff rate was Rs. 600/- per MT. However, by Notification No. 64/89, dated 1-3-1989, the effective rate of duty was fixed at Rs. 500/- per MT. This rate was continued in 1990, by Notification No. 60/90-C.E., dated 20-3-1990. It is stated that the basic inputs for manufacturing the above rods in question viz. ferrous waste and scrap, remelting scrap inputs and iron or steel, iron and non-alloy steel, ingots/billets etc. were suffering duty, at the same specific rates as prescribed for the products in question. Therefore, it is stated that there was no intention on the part of the Govt. to collect duty on CTD Bars.

6. It was specifically urged that the Range Superintendent had visited the factories and the details of the [manufacture] had been collected during 1989. The manufacturers' Association had also given the details of all the factories. Therefore, there was no scope for suppression of any fact by any unit and hence the demand were all barred by time. None of the units had any intention to evade duty. The understanding of the Govt. itself by virtue of Finance Minister's Budget speech, it was clear that the Govt. department had no intention to impose duty and hence I here was a clear bona fide belief, both on the part of the department as well as on the parties about non-dutiability of the product. This had also prompted the Board as well as some Collectorates to issue clarifications and Trade Notices about the non-levy duty on the product.

7. (i) All these submissions made before the ld. Collector was in vain. The ld. Collector rejected all the pleas including the plea of the time bar. The Collector, Bangalore, has taken the view that by issue of superseding Notification No. 202/88, dated 20-5-1988, the words, "but including those twisted after rolling" were omitted. Therefore, the twisted bars were excluded from the purview of

exemption allowed under Notification No. 202/88. He has held that the Tor Steel manufactured by them became ineligible for duty exemption, yet the parties had continued to clear the goods without payment of duty and did not take out a CE Licence nor observed CE procedure. He also rejected the contention that the Govt. had substituted the words "cold finished" in Notification No. 202/88 for the words "including those twisted after rolling" and the exemption for Tor Steel continues even after change, since Tor Steel falls under category "Hot rolled cold finished (because for steel after hot rolling is cold finished by twisting). He has further held that Notification No. 202/88 is very specific and there is no room for interpretations and scope of the Notification cannot be extended beyond the actual wordings of the Notification. He has held that if the Govt. meant that the exemption can be extended to Tor Steel which is stated to be cold finished, then there was no need to again reintroduce the words.

"but including those twisted after rolling" by the amending Notification No. 170/89, dated 16-9-1989. The Collector has, therefore, concluded, that by such reintroduction of these words, it becomes clear that the exemption to twisted bars and rods after rolling were not available under Notification No. 202/88. In that view of the matter and as they had failed to file declaration, take licence and pay the duty, the ld. Collector, has held that larger period was enforceable. Thus, the duties were confirmed besides imposition of penalties under Rule 173Q of Central Excise Rules, 1944. There is also a finding on rejection of Modvat in the order passed by ld. Collector, Bangalore.

(ii) The Learned Collector, Chandigarh in the order, dated 29-3-1993 in the case of Aeran Steel Rolling Mills has taken a view that :-

"It is nobody's case that the impugned goods manufactured and cleared by the Noticee conformed to the products defined in clauses (ij), (k) or (1) (here the Collector is referring to the definition as appearing in Note 1 of Chapter 72). The indisputable position is that the noticee had manufactured and cleared other bars and rods falling within the mischief of the definition given in Clause (m) of the said Note and the aforesaid bars and rods had also been twisted after rolling. Now the process of twisting after rolling of the other bars and rods does not take them out of the scope of the definition of the term other bars and rods because the definition as given in the Chapter Notes is not only an aid to interpretation but has to be strictly applied wherever the term has to be understood in the context of the schedule. Any other course would be against the settled proposition of law that where statutes defines any term the meaning assigned to the term in the statutory definition has to be mandatorily followed and the any attempt at assigning any other meaning to that term would be against not only the accepted cannons of interpretation but also against fair conscience.

3.4 I am aware that the Central Board of Excise & Customs has vide letter F. No. 189/44/89-CE. 4, dated 16-3-1992 decided not to recommend waiver of duty under Section 11C of the Act on the bars and rods of iron or non-alloy steel not further worked then hot rolled, hot drawn or hot extruded but including those twisted after rolling falling under Chapter 72 during the period from 20-5-1988 to 16-8-1989".

Examining further on this point, the Learned Collector has held that :-

"Since the power of the Central Government in its sweep covers cases of both short-levy, non-levy and excess-levy the minimum that the field formations needed to know was the consideration which had weighed with the Board in deciding not to make the recommendation in this case which in any event worded as it is Section 11C does not require the Board to make."

The Learned Collector had held that the goods manufactured by the noticee stood covered under Serial No. 2 of the table annexed to the said notification before its amendment vide Notification No. 170/89-C.E., dated 16-8-1989. As regards time bar issue, the Learned Collector has clearly held, "It is on record that the Department had become aware of the manufacturing activities being carried out by the Noticee as early as on 10-7-1989 where the Superintendent of Central Excise had sought certain clarifications from the Noticee. It is also on record that the Noticee had given the required clarifications which related to the manufacture and clearance of the impugned goods during the impugned period on 7-5-1990. It is also on record that the show cause notice in this case has been issued on 27-4-1992, that is to say nearly two years after the information had been made available to the Department. It would, in my view, be unfair to confirm the demand even if the Department's case had succeeded on merits as the extended period of limitation is not invokable on the facts of the case.

4. In [fine] for the reasons recorded by me in paras 3 to 3.10,1 hereby drop the proceedings initiated against the Noticee vide the impugned show cause notice both on merits and under limitation.

Sd/-

(Mahesh Kumar) Collector 29-3-1993."

(iii) However, on change of the Collector, the proceedings in all other cases were not on the lines adopted by the Collector passing the above order. In all other cases, the Learned Collector took a different view of the matter and has held that the impugned goods were not covered under the notification during the period 20-5-1988 to 15-8-1989. The plea for granting Modvat credit was also rejected and has held that the decision of Jagran Machine Tools v. Collector of Central Excise is misplaced and is distinguishable inasmuch as, the case cited by the Noticees pertained to grant of benefit of provisions of Rule 56A of the Rules, whereas the present case, involves grant of benefit under Modvat Scheme, where filing of declaration for availing credit of the excise duty paid is a statutory requirement under Rule 57G of the Rules. The Learned Collector has also rejected the prayer of time bar. He has also rejected the plea of Classification List being approved for the period 1-7-1988 to 10-8-1988, which was placed to plead that demands cannot be invoked under the proviso to Section 11A of the Act. The plea regarding the dropping of proceeding by previous Collector in identical case of Aeron Steel Rolling, was also rejected on the ground that the Central Board of Excise & Customs had reviewed that order under Section 35E of the Act. The Learned Collector has also rejected the plea that Notification No. 170/89-C.E. is also not a clarificatory in nature. The plea that no manufacturer in the country had paid the duty on twisted bars, and hence a bona fide belief of applicability of Notification existed has also not found favour with the Learned Collector. The Learned Collector, Rajkot has given a finding on the 'CTD' bars being known in the market as separate goods and being marketable also and has rejected the plea that no new goods

arises on manufacture of 'CTD bars'.

(iv) The Learned Collector, indore, Allahabad, Rajkot, Bangalore have also rejected the appeals on the similar grounds and also imposed penalty, besides confirming demands for larger period.

8. We have heard the Learned Advocates, Shri V. Sridharan, S.C. Jain, J.S. Agarwal, R. Santhanam, Kamaljeet Singh, G.S. Bhangoo, K.K. Anand, P.S. Bedi, Vivek Kohli and Ms. Archana Wadhwa for the appellants and Shri R.K. Kapoor, the Learned SDR and Shri Somesh Arora, the Learned JDR for the department.

9. Shri V. Sridharan submitted that the process of twisting does not amount to manufacture, as no new commodity comes into existence, although, the impugned goods may arise out of cold rolling process, after hot rolling. Yet, the goods are required to be considered as 'rods and bars'. The twisting to the bars and rods are done merely to help the goods to acquire better grip in construction activity and that the items continuous to remain as 'bar and rod'. There is only a physical change and it is only for identification purpose the item is called 'CTD Bars', while in fact, in trade and commercial parlance, both the items are one and the same, in view of the fact that both the items are used for the same purpose of construction activity. In this regard the Learned Advocate relied on the ruling of the Hon'ble Supreme Court rendered in a sales tax matter, which according to him has full applicability, as the judgment had been rendered in the context of the understanding that arises on reading a tariff heading in respect of plain bars. It is his contention that on such an understanding, it has been held that such process of twisting does not amount to a process of manufacture, as in the case of Telangana Steel Industries v. State of Andhra Pradesh as reported in 1994 (73) E.L.T. 513. Relying on para 9 of this judgment, the Learned Advocate submitted that when the Tariff classifies both the items bars and twisted bars in the same Tariff sub-heading then it implies that the legislature has so grouped it, with an intent not to tax the item over again and it also indicates, the legislative intendment, in considering both the bars and CTD Twisted Bars, as one and the same item, without the other emerging out of a process of manufacture and to be considered as separate goods. In this regard, very strong reliance was placed on the Trade Circulars dated 23-9-1975 and 13-9-1978, wherein the department had clearly held and stated that twisting of bar by cold rolling did not amount to a process of manufacture under Section 2(f) of the Central Excises and Salt Act, 1944 and that no new commodity came into existence. He further drew support from the ruling rendered in the case of Bombay Iron Foundry v. Collector of Central Excise as reported in 1987 (32) E.L.T. 360 para 8. He further contended that where a entry mentions the term "including" it referred to all items and hence, bars would also include Twisted Bars. On this proposition on the term 'including' to be read to mean all items of similar nature are to be read as to fall in the same category. The Learned Advocate relied on the ruling rendered in the case of Galada Continuous Castings Ltd. v. Collector of Central Excise, as reported in 1985 (22) E.L.T. 884 paras 6 & 7. Further analysing the history of the Tariff Heading and its evolution, the Learned Advocate, submitted that the legislature had never intended to impose any duty on the 'CTD Twisted Bars'. All through the 'bars and rods' had been exempted from duty and the Govt. by issuing the Notification No. 170/89-C.E., dated 17-8-1989 had again added the crucial words namely, "but including those twisted after rolling". Therefore, it is very clear that the Notification No. 202/88-C.E, not incorporating these words, was a mere slip, as the previous Notification No. 90/88, had those

words, and the item had been clearly exempted. Therefore, it was contended that the Notification No. 170/89-C.E. is merely a clarificatory in nature, and it had a retrospective effect. It is his submission that even otherwise a clear reading of Notification No. 202/88-C.E. indicates that twisted bars obtained by a process of cold rolling was also clearly included in the Notification. It was submitted that in Notification No. 202/88, the crucial words occurring in the column 'Description of final products' has led to this controversy. It is argued that these terms did not apply to the "Twisted Bars", as it did not fall in this category, but only those items stated in the brackets fall therein namely (excluding bars and rods plated or coated with zinc and other base metals). It is stressed that "not further worked" referred to such works carried on by specialised process on non-alloy steel, stainless steel and other alloy steel and it did not referred to "twisting" activity on the "bars and rods". It was emphasised that twisting being a 'cold rolled' was clearly included in the terms of the Notification, as after the words 'not further worked.' the word 'than' has occurred which should be understood to mean 'other than' and hence the terms of Notification:

"bars and rods of Iron, non-alloy steel, stainless steel and other than rolled, hot-drawn alloy steel, or hot-extruied or cold-rolled or cold-formed/cold finished/excluding bars and rods plated or coated with zinc and other base metals."

should be interpreted to mean that 'not further worked' referred to those items appearing in the brackets of the Notifications and also to items on which "further work" is carried on other than specified herein that is "hot rolled, hot drawn, or hot extruded or cold rolled or cold formed/cold finished". Therefore, it was very vehemently argued that the words "not further work" did not refer to "twisted bars" as it fell within the term "cold rolled" and hence, the Notification No. 202/88-C.E., if interpreted in the light of the legislative history, Board's clarification, and in department's in action in not proceeding to levy duty immediately after issue of Notification No. 202/88-C.E. till the Notification No. 170/89-C.E. was issued; then it follows that Notification No. 202/88 was to cover even to 'CTD Bars'. The doubt which was lingering, was clarified by introducting the words "but including those twisted after rolling" though Notification No. 170/89-C.E. and hence, the amending Notification had merely made explicit, what was implicit and hence Notification No. 170/89-C.E. had a clear retrospective applicability. In this regard, reliance was placed on the ruling rendered in the case of Coromondal Fertilisers Ltd. v. Collector of Customs, as reported in 1986 (25) E.L.T. 861, which had clarified in similar circumstances, that such words added subsequently, were merely clarificatory in nature and has to be given retrospective applicability. It was further argued that this was equally clear from the reading of the speech of Finance Minister, while moving the Finance Bill of 1977 [See 1977 (1) E.L.T. 1 para 3] wherein, the Government had clearly spelt out its intention not to levy duty on this item. Further reliance was placed on the ruling rendered in the case of Collector of Customs v. Shaw Wallace and Co. Ltd., as reported in 1991 (56) E.L.T. 143 (Tri.), which had been followed in the case of Super Cassettes Industries v. Collector of Customs, as reported in 1992 (58) E.L.T. 105 (Tri.), wherein in a similar circumstances, the Tribunal had held that the Notification in question had retrospective effect, as what was implicit had been made explicit, by bringing an amending Notification, clarifying the terms of the previous Notification. The Learned Counsel submitted that the reason for this conclusion is also due to the fact that the rate of duty per ton on the input and output had been the same therefore, it was clear from all the facts and circumstances of the case that the Government had no intention to levy duty on the impugned item. Shri V.

Sridharan, the Learned Advocate further argued that the definition of "other bars and rods" appearing in Note (m) of Chapter 72 of the Tariff, in question clearly brought within its purview "rods twisted after rolling also". Therefore, when the department has classified the goods under Chapter sub-heading 7214.90 - other, under main Heading 72.14, which reads:

"other bars and rods of iron and non-alloy steel, not further worked than forged, hot rolled, hot-drawn or hot extruded but including those twisted after rolling."

then it follows that the definition of Chapter Note (m) applied and as these words had been fully incorporated in the Notification in question, hence the definition of 'other bars and rods' as per Note (m) was required to be applied, while interpreting the terms of the Notification in question. Therefore, it was argued that in any eventuality, the item in question was clearly exempted. Further, strength was also drawn from the terms of the heading, which classified these goods under the previous Tariff Heading 26AA prior to 1-8-1983, Tariff Item 25(1) w.e.f. 1-8-1983, Tariff Heading 72.09 w.e.f. 1-3-1986, and after aligning the Tariff Item to HSN from 1-3-1988, it was classified under Chapter sub-heading 7214.90 and for all these periods, it was exempted under Notification Nos. 152/77, 208/83 and 90/88 respectively. It was argued that as and when the Chapter heading was amended, the corresponding notifications were also issued, exempting the item in question. A mere slip absence of the said crucial wordings "but including those twisted after rolling" in Notification No. 202/88-C.E., had caused this confusion, however, this had been clarified by the Board by circulars referred to earlier, and hence, it was argued that the parties had a clear bona fide belief of the Notification granting the exemption. There were very clear circumstances to hold such a belief and therefore, as per the ratio of the rulings rendered by the Hon'ble Supreme Court in the case of Padmini Products v. Collector of Central Excise as reported in 1989 (43) E.L.T. 195 and Collector of Central Excise v. Chemphar Drugs and Liniments as reported in 1989 (40) E.L.T. 276, the demands are barred by time.

10. It was further submitted that in all the appeals, the department had collected the details from the Association regarding the product figures of all the parties during 1988 itself and hence, there was inaction on the part of the department and due to such inaction of the department in issuing show cause notices, the parties cannot be blamed. The Collector, Chandigarh in the case of Aeron Rolling Mills had held in parties favour both on merits and on time bar. The Learned Counsel submitted that in the show cause notice, there was also no allegation or pleading regarding suppression or misstatement. It is argued that the department has to state what constituted deliberate and conscious suppression and there were no such facts in these appeals, as both the department and the Trade held a belief of the item being exempted from duty. In this regard the ruling of Hon'ble Supreme Court rendered in the case of Cosmic Dye Chemical v. Collector of Central Excise as reported in 1995 (75) E.L.T. 721 and that of Nagpur Engineering Co. Ltd. v. Collector of Central Excise, as reported in 1993 (63) E.L.T. 699 was relied.

11. The Learned Counsel submitted that the Tribunal had already decided the issue arising in this case in [party's] favour and the ratio is also required to be followed as in the case of:

(i) Chamundi Steels Rerolling Mills v. Collector of Central Excise - 1994 (3) RLT 855;

(ii) Vivek Rerolling Mills v. Collector of Central Excise - 1994 (73) E.L.T. 660.

It was further submitted that subsequent issue of clarificatory Notification cannot be a ground for invoking larger period and the ratio of the case as in Birla Jute Industries Ltd. v. Union of India, as reported in 1992 (61) E.L.T. 437.

12. It was lastly pleaded that the input bars were all duty paid and that the Modvat was available to the item in question. The finding given that declaration had not been filed is not a correct reading of the provision of the law. The filing of declaration would arise only at the time when demands would be quantified. The department while quantifying the demands under Section 11A is bound to give deductions to all those items, which are exempted from duty, as well as the Modvat, as Modvat, was introduced to avoid the cascading effect. He submitted that non-filing of declaration is only a procedural failure and it should not come in the substantive right of Modvat deductions, when duty has been quantified under Section 11A. The Learned Counsel read this Section to explain that duty demandable, would mean only that duty which is liable to be paid after granting all available concessions including proforma credit and Modvat deductions. In this regard the ruling of Bombay High Court rendered in the case of Kirloskar Brothers Ltd. v. Union of India and Ors., as reported in 1988 (34) E.L.T. 30 was relied, which had laid the rule that proforma credit should be granted irrespective of filing declaration, and the plea as raised here by department was rejected by the High Court.

13. All the other counsels Have adopted the arguments ably presented by the Learned Advocate, Shri V. Sridharan. However, each one of them have contributed their part of the arguments also, which are noted herein.

14. Shri S.C. Jain submitted that in their appeals the party M/s. Essar Steels had filed declaration claiming the exemption on 20-3-1989. An application under Rule 57H(i)(2) was also submitted to the Assistant Collector for Modvat claim. The Range Superintendent had verified the claim and had also issued a certificate. In these circumstances, the order of the Learned Collector to deny Modvat in their case is totally unsustainable. The Learned Counsel relied on the ruling of the Hon'ble Supreme Court rendered in the case of Padmini Products. He also submitted that the first show cause notice in their case did not invoke larger period and, therefore, the second show cause notice invoking larger period is not sustainable as has been held by the Tribunal in the case of Secals Limited v. Collector of Central Excise, as reported in 1986 (24) E.L.T. 64.

15. The Learned Advocate, Shri J.S. Agarwal submitted that in their party's case, the party had filed declaration and they had also allowed the code number. The Collector had noted about this aspect in para 11 of his order but yet he had proceeded to confirm the demands for larger period, which was against his own findings of facts. He submitted that even independently, where party had held the bona fide belief in the light of Board's own instructions vide Letter No. 267/92-CX. 8, dated 30-1-1992 as reported in 1992 (59) E.L.T. T7, the demands cannot be confirmed nor penalty imposed.

He relied on the rulings rendered in the following cases :

(i) Re-rolling Mills, Himkud and Ors. v. Collector of Central Excise and Ors. - 1986 (25) E.L.T. 52;

(ii) Saphire Steel (P) Ltd. v. Collector of Central Excise -1994 (71) E.L.T. 1049;

In this case the Tribunal dealing on a similar issue has held that the Modvat benefit should be given even if the declaration had not been filed.

(iii) H.M. Baga v. Collector of Central Excise - 1994 (5) RLT 160;

(iv) Vivek Re-rolling Mills and Ors. v. Collector of Central Excise - 1994 (4) RLT 265.

16. The Learned Advocate, Shri R. Santhanam argued little more extensively and placed several citations in support of the points urged by him.

(i) He submitted that the exemption Notification cannot be the basis for charging duty and the procedure adopted by the Collector is mis-conceived. In this regard he has relied on the ratio of the following rulings :

(a) Sales Extrusions (P) Ltd. v. Collector of Central Excise -1984 (16) E.L.T. 356;

(b) Kiran Spinning Mitts v. Collector of Central Excise -1984 (17) E.L.T. 396;

(c) Collector of Central Excise v. Kiran Spinning Mills -1988 (34) E.L.T. 5 (S.C.).

(ii) The second point raised is that the amending Notification which was issued subsequently was clarificatory in nature and it has a retrospective effect. In this regard, he relied on the following ratios :

(a) Glindia Limited v. Union of India -1988 (36) E.L.T. 479;

(b) Vidharbha Ceramics (P) Ltd. v. Collector of Central Excise - 1985 (20) E.L.T. 326;

(c) Super Cassettes Industries Ltd. v. Collector of Customs -1992 (58) E.L.T. 105;

(d) Union of India and Ors. v. Modi Rubber Ltd. and Ors. -1986 (25) E.L.T. 849;

(e) H.H. Sri Rama Verma v. Commissioner of Income Tax -1991 (187) ITR 308.

(iii) The next point urged by the Learned Advocate, Shri R. Santhanam is that a mere process of twisting does not amount to manufacture nor does it bring into existence a different product despite the name being different. In this regard, the following citations were placed :

(a) Bharat Forge & Press Industries (P) Ltd. v. Collector of Central Excise - 1990 (45) E.L.T. 525;

(b) Dunlop India Limited v. Union of India -1995 (75) E.L.T. 35;

(c) Collector of Central Excise v. Saraswathi Stores -1995 (75) E.L.T. 538;

(d) Collector of Central Excis v. Popular Cotton Covering Works -1994 (73) E.L.T. 264 (S.C.).

(iv) The Learned Advocate submitted that the notification has to be interpreted liberally and it should be done keeping in view the legislative intent in the matter. On such an interpretation, the result that would fall out is that the item is covered within the ambit of the Notification in question. According to him, the bars and twisted bars are the same and also that the term "not further worked" does not refer to the twisted bars as the products arising out of cold form is exempted and as this product has been manufactured by cold processing, the Notification clearly covers the product. In this regard, he relied on the following rulings :

(a) M/s. Hemraj Gordhanda; v. H.H. Dave, Assistant Collector of Central Excise & Customs, Sural and Ors. -1978 (2) E.L.T. (J 350);

(b) Mangalore Chemicals & Fertilizers Ltd. v. Dy. Commissioner of Commercial Taxes and Ors. - AIR 1992 SC 152;

(c) Union of India v. Wood Papers Ltd. -1990 (47) E.L.T. 500;

(d) Tata Oil Mills v. Collector of Central Excise -1989 (43) E.L.T. 183;

(e) Novopan India Ltd. v. Collector of Central Excise & Customs -1994 (73) E.L.T. 769;

(f) Liberty Oil Mitts (P) Ltd. v. Collector of Central Excise -1995 (75) E.L.T. 13;

(g) Swadeshi Polytex Ltd. v. Collector of Central Excise - 1989 (44) E.L.T. 794;

(h) C.W.S. (India) Ltd. v. Commissioner of Income-Tax -1994 (208) ITR 649.

(v) The Learned Counsel emphasised on the ratios laid down in these judgments to urge that a reasonable interpretation has to be adopted and that the necessary implication arising therefrom pertaining to the exemption cannot be denied. That the procedural requirements should not be streched too much. That the Notification does not lay down any substantive procedure; that a reasonable construction has to be adopted and a liberal view to be taken, while interpreting the Notification. That, the ratio laid down is that benefit of doubt should go to the Revenue as held in the case of Novopan India Ltd., is per incuriam, as the same has been stated without taking into consideration the Larger Bench judgment rendered earlier by the Supreme Court. Hence, Novopan

India Ltd., should not be applied. That, while interpreting a Notification, no portion of it should be ignored to make the Notification unenforceable, hence, it was argued that liberal construction should be adopted, for granting the benefit.

(vi) The Learned Advocate submitted that the appeals in which he is appearing arose from Chandigarh Collectorate, and the previous Collector had allowed the case of one of the assessee both on merits and on time bar. Therefore, taking into consideration the declarations filed by his party and also RT 12 assessed and classification List approved, there was no question of any wilful default or failure to comply with any procedural requirement.

(vii) He submitted that the penalty is not leviable in these cases and the same is unjustified. In this regard he relied on the ruling rendered in the cases :

(a) Hindustan Steel Ltd. v. State of Orissa -1978 (2) E.L.T.(J 159);

(b) Khemka & Co. (Agencies) Pvt. Ltd. v. State of Maharashtra and State of Mysore v. Guldas Narasappa Thimmaiah Oil Mills -1975 (35) STC 571.

(viii) He submitted that the Modvat Credit was admissible and that the Range Superintendent has already verified and certified and on that basis, stay had been granted to them. He submitted that Rule 57A had not been followed by the department and the figures had not been arrived at correctly. He relied on the same rulings as cited by the Learned Advocate, Shri V. Sridharan on this issue and also on the issue of time bar.

17. The Learned Advocate, Shri Kamaljeet Singh submitted while adopting the arguments of the Learned Advocate, Shri V. Sridharan, that their party had been filing RT-12 regularly and they had surrendered the CE Licenses only at the instance of the department. Hence, the question of enforcing the proviso to Section 11A did not arise at all.

18. The Learned Advocate, Shri G.S. Bangoo while adopting the arguments submitted that Chapter Heading 72.14 & 72.15 made a distinction only to the extent that Heading 72.14 applied to hot rolling products subjected to forging etc. while, Heading 72.15 covered re-cutting steels and other steels etc. Therefore, Chapter Heading 72.15 excluded cold rolled products and the same were brought within the ambit of Heading 72.14. The hot rolled product on being cooled were subjected to twisting, which did not result into a different product. He submitted that Notification No. 90/88 covered only Heading 72.14 and not 72.15. He submitted that Notification No. 202/88 covered both cold and hot rolled products. Therefore, expression "including those twisted after rolling" was only to bring the distinction between 72.14 and 72.15. He submitted that legislative intent is very clear in exempting Bars, Rods and twisted rods and also those products levied with, duty of Rs. 1200/- and above. He submitted that the products carrying duty at the rate of Rs. 800/- per ton, were also exempted from duty under the Notification. Therefore, it cannot be construed that those products which were subjected to duty of Rs. 550/- were intended to be excluded from exemption. Such an interpretation placed by the Collectors is totally erroneous and against the legislative intent. Therefore, in the context, it has to be presumed that the Notification No. 170/89 is clarificatory in nature and that the

earlier Notification No. 202/88 covered the product in question. He submitted that the Collector had dropped the demand in the four cases namely, Pearl Steel, Surindra Streel, Friends Steel and Kansi Steel. Therefore, taking a different opinion in another set of appeals is totally injudicious. He submitted that in the Appeal E/693/94 the department had issued the notice to the partners who had already left the firm, when the manufacture took place and therefore, the proceedings against them were vitiated.

19. Shri K.K. Anand, the learned Advocate while adopting the arguments of Shri V. Sridharan as well as those of made by Shri Bangoo pointed out to the proceedings which had been dropped by earlier Collector and submitted that a similar view should have also been taken. He submitted that it was for the Collector to have taken a clarification from the Board or from the Government and hence the finding given that as there was no notification was issued under Section 11C and hence, duty is leviable, is not a correct conclusion.

20. Shri P. S. Bedi, the learned Advocate argued his case in the light of legislative history of this particular product and submitted that the Government had already collected duty in respect of this product at the input stage itself by enhacing the duty on the ingots. This was very clear, as can be seen from the tariff rates which had been increased on the inputs, from time to time and also in the light of Finance Minister's Budget speech of 1977. He submitted that the hot rolled bars cannot be weighed in that condition and production records cannot be maintained at this stage. They had allowed to cool the hot rods and only thereafter, the process of twisting is carried out. The production figures had not submitted to the department. Therefore, the removal of hot rolled bars under Rules 9 and 49 has to be taken only after the twisting process and hence, twisting is a part of the process of hot rolled bar and that both hot rolled bar and cold finished twisted bars are one and the same. He submitted that there is no exclusion clause to exclude the twisted bars. He also made a grievance that the Collector had allowed the appeal in respect of the few manufacturers while denying to their party. It is his further contention that there is no mention of CTD bars in the tariff and only when bar is mentioned in the tariff, it should be understood to mean all varieties including the twisted one. It is his further plea that a Notification always indicates inclusive clause as a rule. In the absence of such a clause then the Notification is required to be interpreted as such. The definition of bars as appearing in the tariff, should be applied, while interpreting the Notification. It is his further plea that the department had never taken a stand that twisting is not a finishing process, nor they had controverted the plea taken by the manufacturers in large majority of the appeals. The Collector had not given any finding on the question as to whether the twisted bar is a separate marketable commodity. Shri P. S. Bedi submitted that as regards iron & steel, the Government has always granted the Modvat, by treating the inputs as deemed to have discharged the duty element and on that premise, Modvat has been granted, even in cases where goods have been removed clandestinely, without observing any procedural rules.

21. Shri Vivek Kohli, the Lean led Advocate has adopted the arguments of other counsels and he further pointed out that as far as their case is concerned, there was voluminous correspondence with the department, and that they had also filed declarations during 1990 and, therefore, the show cause notice issued in November, 1992 is time barred. Despite these facts, the Collector had ignored it and had held that they had suppressed the facts. The Association had also given the clearance figures to

the Range Superintendent during 1989 itself. Therefore, when there was a doubt in the department's mind also regarding now dutiability of the twisted bars, then in such a circumstance, the benefit of doubt should go to the Assessee and in this regard, he relied on the judgment rendered by the Tribunal in the case of Punjab National Fertilizers & Chemicals Ltd. v. Collector, of Central Excise as reported in 1991 (54) E.L.T. 115 (Tri.).

22. Ms. Archana Wadhwa, the learned Advocate adopted the arguments of other counsels and relied on the Modvat statement filed by the parties.

23. The department's case was argued by the learned SDR, Shri R.K. Kapoor and the learned JDR, Shri Somesh Arora. Shri Kapoor submitted that the process of manufacturing twisted bar is by hot rolling process and not by cold rolling. Merely because the hot bars are allowed to cool, before they are twisted, that does not mean that the twisting has been done by cold rolling process. As cold rolling process in technical terms has a totally different understanding. It is his contention that the twisting, has to be done, when the hot iron is in soft stage. Therefore, he submitted that the words "but including those twisted after rolling" has occurred in the amending Notification No. 170/89 after the words "hot rolled, hot-drawn or hot-extruded" and before the words "hot extruded or cold rolled or cold formed/cold finsihed." Therefore, it reflects from these incorporating words, that the process of manufacturing is by hot rolled process only, as these words had not been there in Notification No. 202/88. It indicated that the legislature had intentionally decided not to grant the benefit to the twisted bars. He submitted that the Notification No. 170/89, in any event of the matter, is not clarificatory in nature and it cannot be given a retrospective effect. The Learned SDR has drawn his support from the reading of the HSN notes appearing at page 1001 in respect of Chapter Heading 72.14 which deals with:

"Bars and rods of iron, non-alloy steel, stainless steel and other alloy steel, not further worked than hot rolled, hot drawn or hot extruded or cold rolled or cold formed/cold finished (excluding bars and rods plated or coated with zinc and other base metals)".

"72.14. Other bars and rods of iron or non-alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extruded but including those twisted after rolling."

Referring to these notes, the learned SDR pointed out that the Explanatory notes, indicated that the twisted bars arose out of the process of hot rolling only. Therefore, it is his submission that twisting cannot be done by cold rolling process. However, he agreed that the twisted bars have been mentioned under 72.14 only and that 72.15 which refers to "Other bars and rods of iron or non-alloy steel" is excluded. He submitted that the definition in Chapter Note (m) refers to those bars which falls under 72.14. Therefore, the arguments of the Learned Advocates that the definition appearing in Chapter Note (m) is required to be read for the twisted bars appearing in 72.14 is mis-conceived. He submitted that the twisted bars are used for construction purpose on account of its strength and therefore, it is distinct goods from ordinary the bars, as also because of its separate commercial understanding. The Notification also indicates that the twisted bar is a separate product and, therefore, the finding given by the lower authorities that twisted bar is a separate manufactured product is sustainable. He further pointed out that Chapter Note (1) refers to hot rolled product,

while Chapter Note (m) refers to other bars and rods which has been defined in juxt-opposite to Note (1). The bars which fall under Chapter Note (m) should have uniform solid cross-section and the present item does not have such an uniform solid cross-section and, therefore, it is very clear that a distinction appearing in Chapter Note (m) does not apply to goods in question. He also submitted that the speech of the Finance Minister cannot be looked into for the purpose of interpreting the Notification. It is at best a policy statement. In this regard he has relied on the ruling rendered in the case of B.K. Industries v. Union of India as reported in 1993 (65) E.L.T. 465. He submitted that the fact that the Government had rejected the plea of the manufacturers for issuing of a Notification under Section 11C is a clear intention of the legislative intent not to grant exemption from duty in respect of the goods in question for the relevant period. As regards the plea that the item in question is a separate manufactured marketable commodity, the Learned SDR has relied on the ratio of the following judgments :-

i. South Bihar Sugar Mills Ltd. and Anr. etc. v. Union of India and Tata Chemicals v. R.M Desai, Inspector of C. Excise - 1978 (2) E.L.T. (J 336) ii. Union Carbide Co. Ltd. v. Collector of C. Excise -1978 (2) E.L.T. (J 180) iii. Indian Vegetable Products Ltd. v. Union of India -1980 (6) E.L.T. 704 iv. Chirukandan and Ors. v. Superintendent of Central Excise - 1984 (15) E.L.T. 7 v. Empire Industries Ltd. v. Union of India -1985 (20) E.L.T. 179 vi. Wishwanath Pandey v. Collector of Customs -1984 (16) E.L.T. 404 vii. Metal Forgings (P) Ltd. v, Union of India -1987 (32) E.L.T. 15.

24. The learned SDR also submitted that the Notification is required to be strictly interpreted and the ratio relied by the Learned Advocates on these points are all distinguishable. He also submitted that the decision quoted by Shri V. Sridharan with regard to the twisting not being process of manufacture, pertains to a sales tax case and it was rendered in the context of the relevant entry, which is not pari materia to the present entry in question. He relied on the following citations on the plea that Notification is required to be strictly con-strued:-

i. Bharat Cottage Industries v. Union of India -1992 (59) E.L.T. 30.

ii. Union of India v. Pillaiyar Soda Factory -1992 (57) E.L.T. 261.

25. The learned SDR arguing on the point of invokation of larger period, submitted that the manufacturer had not taken licence nor maintained records and had cleared the goods without payment of duty. Therefore, all in those cases where party had not filed declaration, the department was entitled to invoke larger period. However, in cases where the party has filed declaration, the limitation point could be considered in their favour including the grant of Modvat. He submitted that units were under SRP and when notification granting exemption was withdrawn then it became mandatory on the part of manufacturer to file declaration and pay the duty. With regard to the plea that there was wilful suppression of facts, the Learned SDR relied on the following citations:

i. Vishwa Industrial Works v. Collector of C. Excise -1987 (31) E.L.T. 976 ii. Jajmau Dyeing & Proofing Co. v. Collector of Central Excise - 1986 (25) E.L.T. 595 iii. Essco Sanitations v. Collector of Central Excise -1989 (44) E.L.T. 752 iv. Unik Springs (India) v. Collector of Central Excise -1985 (22) E.L.T. 456 v. Fee Kay Industries v. Collector of Central Excise -1990 (50) E.L.T. 520

26. He submitted that there is suppression of facts in these cases and hence, there is justification for imposing penalty. In this regard, he relied on the following rulings:

i. Mahendra Radio and TV (P) Ltd. v. Collector of Central Excise -1988 (35) E.L.T. 668.

ii. Creative Cosmetics v. Collector of Central Excise -1993 (63) E.L.T. 348.

27. As regards the non-grant of Modvat to the appellants, the Learned SDR submitted that the Modvat cannot be given retrospectively. Therefore, the ruling rendered by the Tribunal in the case of Chamundi Steels Rerolling Mills v. Collector of Central Excise, as reported in 1994 (3) RLT 855, relied by the appellants is required to be reviewed and this point is required to be referred to the Larger Bench. He submitted that the Tribunal has already held in number of cases that the Modvat cannot be granted in cases where there has been non-filing of declaration under Rule 57G which ruling the Learned Collector had followed and, therefore, the Learned Collectors cannot be faulted on this aspect of the matter. He submitted that the compliance of CE Rules is mandatory as the rules are subordinate legislation. The non-compliance of such an substantive law especially filing of declaration is sufficient to deny the benefit and it cannot be said that it is only a procedural irregularity. In this context, the Learned SDR relied on the following rulings :

i. Tata Oil Mills Co. v. Collector of Central Excise -1990 (48) E.L.T. 279 ii. British Physical Laboratories v. Collector of Central Excise - 1994 (74) E.L.T. 593 iii. Collector of Central Excise v. Bharat Containers (P) Ltd. -1990 (48) E.L.T. 520 iv. Usha Martin Industries Ltd. v. Collector of Central Excise - 1990 (46) E.L.T. 392 v. Chetna Industries v. Collector of Central Excise -1993 (63) E.L.T. 344

28. Therefore, he submitted that in the light of several citations, the ruling rendered in the case of Chamundi Steels Rerolling Mills is contradictory to the rulings already in existence. Hence, the matter is required to be referred to a Larger Bench. Shri Somesh Arora submitted that Section note cannot be looked into, while interpreting the Notification. In this regard he relied on the following rulings:

i. Collector of Customs v. O.E.N. India Ltd. -1989 (42) E.L.T. 235 ii. Guest Keen Williams Ltd. v. Collector of Customs -1989 (29) E.L.T. 68 iii. Vivek Rerolling Mills v. Collector of Central Excise -1994 (73) E.L.T. 660 iv. Paharpur Plastics v. Collector of Customs - 1994 (4) RLT 687

29. He submitted that there is only a single contradictory judgment as rendered in the case of Eagle Flask India (P) Ltd. v. Collector of Central Excise, as reported in 1991 (53) E.L.T. 65, as well as another case of the same party in the case of Eagle Flask (P) Ltd. v. Collector of Central Excise. The Learned JDR submitted that the item bar is defined in ISI Glossary IS 1956 Part V, 1976 para 2.5 and it becomes obvious from the reading of ISI Glossary that twisted bar will not come within the description and definition of bar of Chapter note (m) as it will have to be round polygons as defined therein. He submitted that the subsequent Notifications are not a clarificatory one and, therefore, the ruling rendered in the case of Instamedic International v. Collector of Customs, as reported in 1994 (4) RLT 149 is applicable to the facts of the present case. He submitted that the compliance of

the Modvat provision is a mandatory provision & in this regard, he relied on the ratio rendered in the case of Indian Farmers Fertilizers Co-operative Ltd. v. Union of India as reported in 1995 (75) E.L.T. 218 and General Industrial Society Ltd. v. Collector of Customs, as reported in 1986 (23) E.L.T. 550. The Tribunal is not a court of equity and granting of Modvat in the absence of filing of a declaration by Tribunal, will be beyond its jurisdiction. He submitted that the Hon'ble Supreme Court has denied the grant of benefit, when they had found that there had been substantial non-compliance of provisions of law, as in the case of Thermax Private Limited v. Collector of Central Excise, as reported in 1992 (61) E.L.T. 352.

30. The Learned Advocate, Shri V. Sridharan countering the arguments of the Learned SDR and JDR submitted that none of the judgments cited by them pertains to denial of Modvat arising under proviso to Section 11A and hence, they are not applicable to the facts of the present cases. He submitted that Section 11A is an exception. He submitted that there is no provision in law, which compels a party to file a declaration in respect of exempted goods, in view of a clear bar, as laid down by Rule 57C. He submitted that no credit can be allowed if the final product is exempted, and hence in a situation like this, the question of filing a declaration did not arise at all. Now, the Revenue has taken a different stand than the one they had understood earlier. The Government had also clarified about that the goods being exempted in terms of trade notices and circulars. In a situation like this the parties cannot be denied the benefit of Modvat on the ground that they had not filed declarations. He submitted that if the Revenue had made the position clear on the issue of notification in question, then in that event the manufacturers would have straightway filed the declaration and obtained Modvat benefit and in that event, there would not have been any demands at all. He pointed out to the provision of Section 11A and submitted that the section made it clear that the duty leviable is to be that much as is imposable, after granting all other benefits, which the party is entitled in law. In this regard, he has relied on the following rulings:

i. Kirloskar Brothers Ltd. v. Union of India and Ors. -1988 (34) E.L.T. 30, (Bombay) para 8 at page 34 ii. H.C.L. Ltd. v. Collector of C. Excise -1994 (71) E.L.T. 608, paras 8 & 9

31. He submitted that the declaration can be filed even today and the benefit claimed as there is no provision created under Rule 57G to deny the benefit or belated declaration. In this regard, he relied on a passage appearing in a Maxwell's Interpretation of Statutes at page 326. The understanding of the Learned author is that law does not lay down an impossible condition for fulfilment. Therefore, in a case like this, when the duty has been exempted before and after the issue of Notification in question and such an understanding prevailed in the minds of the departmental officials as well. Therefore, the expectation of the department that the parties should have filed the declaration, is certainly asking for an impossible condition to be fulfilled today. The Learned Counsel submitted that in a large majority of reported cases, the duty had been quantified after adjusting the benefit of Modvat available to the assessee. He submitted that even in the cases, where there has been no following of procedure and where no licences had been taken, even then the benefit of Modvat has been extended. The citations relied are noted herein below :

i. Kirloskar Brothers Ltd. v. Union of India and Ors. -1988 (34) E.L.T. 30 ii. Haryana State Electricity Board v. Collector of Central Excise- 1988 (37) E.L.T. 81 iii. Jagraon Machine Tools v.

Collector of Central Excise -1993 (65) E.L.T. 300 iv. Byco International and Ors. v. Collector of Central Excise - 1993 (49) ECR 126 v. Saphire Steels (P) Ltd. v. Collector of Central Excise -1994 (71) E.L.T. 1049 vi. Vivek Rerolling Mills v. Collector of Central Excise -1994 (73) E.L.T. 660

32. He also relied on Board's letter vide F. No. 267/6/92-CX. 8, dated 30-1-1992 which is reported in 1992 (59) E.L.T. (T7). He also relied on the ruling rendered in the case of International Tractor Co. of India Ltd. v. Union of India and Ors. as reported in 1977 (1) E.L.T. (J 133).

33. Shri R. Santhanam also relied on the pages 228-229 of Maxwell's Interpretation of Statute and submitted that the subsequent amendment of the Notification discloses the legislature's mind and such an amending notification or amending law is not only a clarificatory but it is also curatory and it is a remedial legislation, which has got a retrospective effect. He submitted that as there was an ambiguity in the field the amending Notification issued should be construed as a clarificatory one. He submitted that there is case made out by Revenue for reference to the Larger Bench on the Modvat issue as there was no contradictory judgments as cases relied by the DRs were clearly distinguishable. He also submitted that in the reported case in £. Spton & Co. (P). Ltd. v. Superintendent of Central Excise and Anr. as reported in 1985 (19) E.L.T. 57, the Allahabad High Court had held that holding of licence is a procedural requirement and notwithstanding the holding of the licence, the Modvat benefit should be extended. He submitted that in respect of cases in which he is appearing, the assessee had obtained licence and the same had been cancelled by the department at their own instance. Therefore, the department cannot be argued that the Modvat is to be denied to them as they had not held a licence or filed a declaration.

34. Shri K.K. Anand, the Learned Advocate also pointed out that the show cause notices had been issued only after the four orders details of clearances of each factory had been submitted by the Manufacturers' Association in October, 1989 itself and, therefore, the demands were time barred. There was . negligence on the part of the department and, there was no failure on the part of the parties at all. He has also pointed out that the decision relied by the DRs Were all decisions rendered in cases other than those arising under Section 11A and, that there was no conflicting decision requiring reference to the Larger Bench.

35. Shri P.S. Bedi also pointed out to the trade notices issued by Chandigarh Collectorate clarifying that twisting did not result in a process of manufacture. He also submitted that his party had obtained licence and the department had asked them to surrender the same after issue of Notification No. 202/88 and, therefore, their present plea of denial of Modvat is unjustified. He also placed on record, the Board's letter dated 23-8-1973 on this point for consideration.

36. We have carefully considered the submissions made by both the sides and have perused the findings given by the Learned Collectors and have extracted the same also in this order. The submissions made by the parties has also been recorded and we have also noted in great length the entire submissions made by both the sides. We have given our anxious considerations to the various pleas raised before us and have also perused the plethora of decisions cited before us, on the various aspects of the matter argued before us. We are quite impressed with the industry shown by both the sides, to highlight on the various legal facets of the controversy and the assistance given to the

Bench in this regard. The points that are required to be considered by us in these cases are :-

i. Whether the CTD Bar is a separate marketable commodity, inasmuch as, as to whether the process of twisting activity results in a different separate marketable goods ii. Whether the Notification No. 202/88, dated 20-5-1988 covered the goods in question?

iii. Whether the Notification No. 170/89 is a clarificatory in nature having retrospective effect?

iv. Whether the parties are entitled for Modvat benefit?

v. Whether the demands are barred by time?

vi. Whether the penalty is imposable in the present case?

i. Whether the CTD Bar is a separate marketable commodity, inasmuch as, as to whether the process of twisting activity results in a different separate marketable goods?

We notice that most of the Collectors have not given a finding on this issue except one Collector. However, that finding is not based on any commercial understanding or by applying trade parlance test except, what the party themselves say about the product. The appellants are relying on a judgment rendered by the Hon'ble Supreme Court in the case of Telangana Steel Industries v. State of Andhra Pradesh, as reported in 1994 (73) E.L.T. 513. As pointed out by the learned DR, this judgment has been rendered under Sales Tax Act and in the context of the grouping of the items in one heading and also in the light of circular issued by the government. Therefore, this question can be best answered only when there is sufficient evidence of trade understanding and as to how the goods are traded and known in the market. The plea that hot rolled rods cannot be weighed and, they are required to be cooled and thereafter twisting is done, which is a completion of the process of manufacture of bars, itself, is a question that is required to be gone into in great detail only with the assistance of technical literature and expert evidence. The parties have not placed any technical literature nor the department has examined, the commercial understanding of the product in the market. Although, there is a admission on the part of the appellants that twisted bar is named separately but their contention is that it is only for the purpose of identification. However, the use of both the products are said to be the same, except that the twisted bars gives a better grip in the construction activity. Therefore, it was pleaded that in the context of its use to which it is put to and also in the light of the understanding in the trade, the twisted bar and the plain bar are one and the same. This is a matter which requires further deliberation at the level of the original authorities. As stated, in the absence of material, it is not proper for us to dwell on these points. More so, because we are not concerned with the question of classification of this item as both the sides agree that both bar and twisted bar falls under Tariff Heading 7214.90. It was also pointed out that before the Tariff was aligned to HSN, the twisted bars were considered as bars and had been classified under 72.09. It is also admitted by both the sides that this understanding of bar and twisted bar to be classified under the same tariff heading even prior to 1-3-1986, continued in respect of erstwhile tariff also. It is also contended that there had been no distinction made between these two items for decades together. Therefore, in the light of this legislative intent from time to time, and in the absence of any

enquiry in this regard, it is not proper for us to go into this question to consider as to whether the twisted bars is a separate goods or not. As can be seen from Heading 72.14 on which both the sides agree for its classification, it is seen that there are three sub-headings, i.e. sub-heading 7214.10 for "Forged", 7214.20 for "Of free-cutting steel" and 7214.90 for "other". Both the sides have stated that the item falls under 7214.90, as "other". As can be seen from the Heading 72.14, there is no separate heading for "other bars and rods and for twisted" and for "twisted after rolling". The duty in the present tariff is Rs. 400/- per ton, which was also the same before the tariff was aligned to HSN. In the erstwhile tariff also there is no mention of twisted bars in Tariff [Item] 26AA(1)(a) which carried duty of Rs. 350/- M.T. The tariff from 1-8-1983 also did not have a separate entry for twisted bars. The bars were classified under Tariff Item 25(9)(ii), which also carried a demand of Rs. 400/-per ton. Therefore, the submission that the duty element from 1-8-1983 continued to remain the same is clearly noticeable. The submission that duty element on input ingot was increased, on the issue of the exemption notification on bars, is also noticeable from the reading of the tariff structure from time to time. Therefore, as the issue of twisted bar being a different goods has not been gone into at any stage and that both the items, Bars and Twisted Bars had been classified under 7214.90 carrying the same rate of duty, therefore, it is not proper to dwell on this aspect of classification, as the appeals could be disposed of on the other issues raised before us.

ii. Whether the Notification No. 202/88, dated 20-5-1988 covered the goods in question?

iii. Whether the Notification No. 170/89 is a clarificatory in nature having retrospective effect?

Our findings on these questions are in favour of the appellants and against the Revenue. The Notifications earlier to Notification No. 202/88-C.E. and subsequent to this notification, granted the benefit to twisted bars. The legislative intent to grant benefit is also indicated from the speech of the Finance Minister, while moving the Bill during the year, 1977. The fact that the Government had issued circulars to treat the twisted bars as not a separate commodity is also a pointer to show that these goods were treated as exempted goods. The fact that the department also had directed the appellants to cancel the licences and not pursued them to pay the duty is also admitted. The fact that there was ambiguity and that the department also raised the issue only after the Notification No. 170/89 was issued, which gave the scope for the department to rake-up the issue is also not denied on record. The controversy that has been raised before us, is :hat the wording of the Notification No. 202/88 indicated that on the bars and rods of iron on which further work has been done is excluded from the ambit of the Notification, and that Twisting being a process of manufacture, and a process of further working on plain rods and bars and, therefore, notification excludes twisted bars. Our finding on these findings are as follows :

In Notification 202/88, after the words "not further worked", the words following thereafter refers to goods which are covered in the notification namely, "hot rolled, hot drawn and hot extruded or cold formed/cold rolled/cold finished". It is an admitted fact before us by the department, as can be seen from the show cause notices, that the goods have been manufactured after hot rolling and that they are known as CTD Bars, which are twisted after a process of cold rolling and popularly known as TOR Steel. The department is admitting that these bars are obtained by a process of cold rolling and it is known as twisted deform bars (CTD Bars). Therefore, bars obtained by hot drawn, cold

formed or cold finished fall within the ambit of the notification. It was argued by the appellants that the tariff Heading 72.14 refers to "other bars and rods of iron which included twisted after rolling" also and hence, the definition appearing in respect of the "other bars and rods" as given in Chapter Note (m) applies to the twisted bars after hot-rolling also. It was argued that this definition has to be applied, while interpreting this notification, as the notification incorporated the tariff heading description as well. On this issue both the sides have relied on several judgments. As we have noticed, the law laid down on this aspect is that if the notification has incorporated the tariff heading in toto then the definitions should also be applied. In these cases, we notice that the notification is a comprehensive one, which does not apply merely to the description of the goods appearing in Heading 72.14, but to other goods as well.

The Revenue's stand is that the definition of "other bars and rods", as appearing in Chapter Note (m) of Chapter 72 cannot be applied, while interpreting the notification, as it is argued that the twisted bars referred in the definition occurring in Note (m) should have a uniform solid cross-section along their whole length in the shape of circles, oracles, rectangles (including squares), triangles or other convex polygons. Hence, the twisted bars referred in the definition cannot be linked with CTD Bars, as it does not have a uniform solid cross-section in the shape of circle, rectangular, square or triangle, as defined, and also it does not satisfy the ISI Glossary of terms. To this proposition, the HSN Explanatory Note at page 1001 is also relied. If this argument is accepted, then what follows is, that the term "not further worked" appearing in the notification refers to those types of twisted bars, which satisfy the definition appearing in Note (m) of the Chapter 72 only and not to the CTD Bars, as admittedly, according to the Revenue, it is manufactured by a process of cold forging/cold rolled. However, according to the Learned DR, it is by Hot forging. Even if this is accepted even then it is also covered by the terms of the Notification No. 202/88-C.E.

On a plain reading of the Notification No. 202/88-C.E. itself, it is very clear that "bars and rods of Iron" either hot rolled, hot drawn or hot extruded or cold formed/cold finished are exempted from duty. It has been shown by the appellants that the goods have come into existence by a process of cold formed/cold finished, after it is hot drawn. Both hot drawn and cold finished are exempted from the ambit of the notification. Now the question is as to whether this twisting is "further worked" or not, and thus excluded from the Notification. The answer to this can be found from the items referred to in the bracket, which refers to the excluded items, namely, "excluding bars and rods plated or coated with zinc and other base metals". In the light of the department's admission that these goods are hot drawn and, thereafter it is cold formed and cold finished and referred to the CTD Bars, they satisfied the terms of the wordings, which grants the exemption. The conclusion to be drawn that CTD Bars are "not further worked", is on the basis of the legislative intent, which has been shown to us, and also because the items having been exempted earlier and subsequent to this Notification. It is also because of the understanding held by the department and the trade notice and circular issued in this regard. Therefore, in the facts and circumstances of this case, on the basis of the admitted position and as from the inception of the Tariff Heading, till date, it is obvious that the Government did not intend to levy duty on the Bars and twisted rods. Therefore, the Notification has to be read in the light of these developments in the peculiar facts and circumstances of this case, and if it is read in this light, the question number three also gets answered in favour of the appellants and we unhesitatingly hold that the Notification No. 170/89-C.E. was a clarificatory

Notification to incorporate the words "but including those twisted after rolling". Therefore, it is clear that what was implicit had been made explicit, and these words are clarificatory in nature. The Learned SDR stated that as these words had been incorporated after the words "hot rolled, hot drawn or hot extruded", and not after the words "cold rolled or cold finished", therefore, it is indicative of these goods having occurred from the process of hot rolled only and not cold formed. It is difficult to appreciate this proposition. The reason being that if such an understanding is placed then it would mean that twisted bars have arisen out of hot rolled bars and then it would support the appellant's contention that the twisting is only a completion of hot rolled process. In any case, we do not wish to dwell much on this point in the absence of technical literature but suffice to say that the facts and circumstances of the case and in the light of legislative intention, it is clear that these goods were intended to be exempted from payment of duty. Further, contention of the DRs is that the Notification is required to be strictly construed. In this regard, we observe that it it is not flowing from the facts of this particular case. We have noted that the Notification No. 202/88, on its plain reading applies to the goods and the subsequent Notification had amplified and clarified the ambiguity which was in existence. Therefore, the question of giving strict interpretation to exclude twisted bars does not arise, especially in the light of the department's clarifying by circulars about bars and twisted bars being classifiable under 7214.90 and being exempted from duty. Hence, we reject this contention of DRs on this aspect of the matter and hold that the rulings cited by them does not apply to the facts of this case and in the light of the findings arrived at by us. Therefore, we accept the plea of the appellants in this regard. The rulings relied by the appellants with regard to the Notification being clarificatory one and to be treated as retrospective is applicable to the facts of the present case, especially the ruling rendered in the case of Shaw Wallace (supra), which has been followed in the case of Super Cassettes Industries (supra).

iv. Whether the parties are entitled for Modvat benefit?

On this issue the Tribunal has given a detailed findings in the earlier cases arising on this issue as cited before us. In all the cited cases on this issue, the Tribunal has held that in the facts and circumstances of the case, Modvat benefit is required to be extended. The Tribunal has also taken into consideration the practice of considering the grant of Modvat of Iron and Steel products, and also on the prevailing practice of treating the inputs as "deemed to have been duty paid". The Learned Collectors have refused to accept this finding, but have chosen to differ from the same. This is not a correct approach to have been followed as the Learned Collectors are bound to accept the orders of the Tribunal, till the same is set aside by the Hon'ble Supreme Court. In the case of Technological Systems Instrument (supra) the Tribunal has held that Modvat benefit is required to be granted even if the procedure has not been followed. The finding given by the Tribunal is reproduced herein below :-

"The learned advocate had argued that Modvat benefit should be granted to the appellants, as the procedure could not be followed. The Tribunal in the case of Haryana State Electricity Board v. Collector of Central Excise reported in 1988 (37) E.L.T. 81 in para No. 12 ha i held as under:

"12. Shri Jain further submits benefit of Notification 201/79 ought to have been allowed to the appellants permitting them to claim set off of duty in respect of duty paid components used in the

manufacture of the transformers. In this connection the Collector has observed that:

"The set-off of duty is admissible where any input material which has discharged Central Excise duty under TI 68 is taken in use in the manufacture of finished goods and that too subject to the observance of procedure as laid down in Notification No. 201 /79, dated 4-6-1979 and this facility cannot be denied if claimed for but no such issue is involved in this case."

We presume that the Collector when he observed "but no such issue is involved in this case" meant that the issue of benefit under Notification No. 201/79 was not necessary to be considered since the procedural requirement of the notification such as filing of declaration, intimating the arrival of duty paid goods, etc. had not been observed by the appellants. Shri Chakraborty raises these objections in respect of this claim. In this connection we take note of the fact that the Department relied entirely on the records of the appellants only in respect of the items used for the manufacture of transformers and the value thereof. In the circumstances it appears to us that it would not be proper to deny the benefit under Notification No. 201/79, if otherwise available, only for the reason that the procedure part had not been complied with. We take note of the fact that the procedure had not been complied with because the appellants were, till the receipt of the notice, under the bona fide impression that no duty was payable and, therefore, there was no need to observe the procedural requirements of this notification. We, therefore, hold that in quantifying and demanding the duty the benefit of Notification No. 201/79 so far as could be made out by acceptable evidence ought to be granted."

Bombay High Court in the case of Kirloskar Brothers Ltd. v. Union of India and Ors. reported in 1988 (34) E.L.T. 30 (Bom.) in para No. 8 had held as under :-

"8. The excise duty payable was determined at Rs. 1,95,682.00, by the Central Excise Authorities. We are told that the petitioners had paid excise duty on the compressors fitted in the air conditioners. This fact has not been disputed by Shri Desai. Shri Desai, however, stated that if the petitioners wanted to take credit for the excise duty paid on the compressors they would have to follow a particular procedure prescribed under the Act and Rules which they admittedly did not follow. In our opinion, this submission of Shri Desai does not hold water. The case of the petitioners has all along been that they were not engaged in the manufacture of air conditioners, and, therefore, no excise duty, fine or penalty was payable by them for the contravention of the provisions of the Act and the Rules.

Moreover, it is not a case where the petitioners had voluntarily paid excise duty on the end product and having also paid duty on the intermediatory product wanted to take credit thereof. In this case the Central Excise authorities have determined the excise duty payable by the petitioners. In the circumstances, it is only proper that they determine the duty which is actually payable by the petitioners. The Central Excise authorities are directed to determine the exact amount of excise duty payable by the petitioners taking into account all the relevant aspects of the matter."

The learned advocate had also taken the plea that reduction of duty from the assessable value has to be granted in view of the decision in the case of Collector of Central Excise v. Vazir Sultan Tobacco

Industries reported in 1991 (52) E.L.T. 59, where it was held as under :

"A harmonious construction of Section 4 of the Act and Rule 5 can lead only to one conclusion - that the extra accrual should be added to the wholesale price and the assessable value worked back after allowing admissible deductions. Addition of such extra accruals to the assessable value would distort the meaning of Section because there is no way in which abatement of excise duty which is permitted by Section 4 can be given if the extra accrual is directly added to the assessable value."

In view of these observations, we order that while calculating duty for the period prior to six months from the date of issue of the show cause notice, the Modvat credit, if any, in view of the decision of the Tribunal in the case of Haryana State Electricity Board v. Collector of Central Excise reported in 1988 (37) E.L.T. 81 may be given."

v. Whether the demands are barred by time?

As regards the time bar issue, we are of the opinion that the department was fully aware of the manufacture of these goods and there was no suppression or mis-declaration in this case. The Manufacturer's Association had informed the department in the year, 19 89 with regard to the clearance figures, of all the units to the Range Superintendent. There has been several visits of the officials to the units, some units were holding licences and Modvat declarations had also been filed. The submissions made by the DR, that the department is willing to grant Modvat in those cases, where declaration had been filed and time bar benefit could also be given to them and not to those who had not filed the declarations and in their cases demands for larger period is required to be confirmed, is not a sound argument and we do not see any reasonableness at all. The fact that the department has directed the assessees to get their licences cancelled, is a pointer to the understanding about that the Notification in question being extendable to CTD Bars as well. There are number of trade circulars and trade notices issued b) the department, clarifying that Twisting does not amount to manufacture, about the availability of duty exemption, besides availability of Modvat, and deem credit facility to the inputs purchased from market. Therefore, the pleas raised by the appellants with regard to the time bar is very reasonable and acceptable. Such a view held by the department has also been brought out by the Collector, Chandigarh, whose finding has already been incorporated (supra). The ld. Collector, Chandigarh has allowed the appeal of M/s. Aerson Steel Rolling Mills on merits as well as on time bar and the said finding is a clear pointer to the understanding of the department. Therefore, there was a bona fide belief held by both the parties as well the Revenue, with regard to the CTD Bars being exempted and hence invokation of larger period in these cases is not justified and the ld. Collectors having proceeded to confirm the demands for larger periods despite pointing about to the declarations and other aspects of the matter is not a correct and reasonable finding and the same is required to be set aside.

As the issue has already been answered by the Tribunal on this point, there is no reason for us to differ from that view on this point and we respectfully follow the same. The ld. DRs submitted that the case is required to be referred to a Larger Bench. We do not see any reason to refer this case to a Larger Bench, as the Tribunal has followed the well laid down judgments on this point. Further, we also take in to consideration the submissions made by the counsels in this regard that claim for

Modvat could not be filed in this particular case, as the department itself had returned the licences on a peculiar understanding held by them. Therefore, there is justification for granting Modvat in the fact and circumstances of the present case. It is also noted that the inputs have suffered duty and that the RT12 returns had been filed. The parties have maintained the details of payment of duty and MODVAT that is available to them. In all the cases, the Range Superintendent has checked and issued certificates also. The certificates states that the claim can be adjusted towards Modvat, except perhaps in few cases, where marginal amount is shown as recoverable. However, we are of the view that even this amount is also not payable, as, we have held that the goods are exempted in the Notification in question. The ld. Advocates had pointed out that the judgments cited by the DRs did not pertain to demands raised under Proviso to Section 11 A. We have gone through the same and we find this submission is correct, but we do not wish to give any finding on this aspect of the matter.

37. In the light of our findings and following the ratio of the Tribunal's rulings in the case of Technological Systems, Chamundi Steels, Vivek Rerollings Mills and Saphire Steel, we hold that the appellants are entitled to the Modvat Credit, as claimed by them.

38. We also find that there is no justification for imposing penalty in these appeals, as there has been no suppression or any intention to evade duty.

39. In the result, the impugned orders are set aside and the appeals are allowed.