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UNION OF INDIA & ORS.

v.

TATA IRON & STEEL CO. LTD.

January 31, 1975

[A. N. RAY, C.J., H. R. KHANNA AND P. K. GOSWAMI, JJ.]

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Constitution of India, 1950 *Art.* 226, 227—*Powers of High Court under article* 226 & 227 *to interfere with classification of a product by taxing authorities.*

Central Excise Act, 1944—*Skelp and strip necessity for identifiable test in fiscal statutes.*

The respondent manufactures hot rolled finished steel products in rectangular cross-section of thickness varying between 16.2 mm and 311.2 mm and rolled in coils (hereinafter referred to as the Product). The respondent describes the product as Strip whereas the appellant classifies it as a Skelp. Skelp is subject to higher excise duty than Strip. The Assistant Collector, Central Excise treated the product as Skelp. On appeal to the Collector of Central Excise, he confirmed it and in revision the Central Government also approved.

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The respondent filed a Writ Petition in the High Court. The High Court accepted the contention of the respondent. On appeal by Special Leave the appellant contended before this Court: (i) That it is primarily for the Taxing Authorities to determine the head or nature under which any particular commodity fell. (ii) The Court can interfere with the decision only if it is perverse. If there were two constructions possible and if the Taxing Authority accepts one of them the Court cannot interfere.

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The respondent submitted: (i) Assessment without application of an identifiable test is perverse and arbitrary. (ii) In the present case, there was no identifiable test before the Taxing Authorities. There is no difference between Skelp and Strip.

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Dismissing the appeal,

Held: There are large number of definitions out of which one can be picked up to satisfy the definition of Skelp according to some authority and another definition to fit in with the concept of strip according to another authority. Since there is no statutory definition for Skelp and Strip, different tests have been resorted to by the different authorities. The question arises whether the High Court was right in interfering with the orders under Art. 226 of the Constitution. It is not for this Court to come to the conclusion on facts. The absence of any identifiable standard naturally gives rise to the scope for arbitrary assessment at the hands of different authorities. It is not possible to hold that the High Court has gone wrong in granting the reliefs prayed for. [422D-F; 423C]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1527 of 1974.

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Appeal by Special Leave from the Judgment & Odrer dated the 14th December, 1973 of the Delhi High Court in Civil Writ No. 1678 of 1967.

F. S. Nariman, Addl. Sol. Gen. of India, D. N. Mukherjee and R. N. Sahthey, for the Appellants.

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N. A. Palkhiala, Ravinder Narain, J. B. Dadachanji, O. C. Mathur, K. J. John and K. R. Jhaveri, for the Respondent.

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The Judgment of the Court was delivered by—

GOSWAMI, J. This appeal is by special leave from the judgment of the Delhi High Court in a writ application there under article 226 of the Constitution. The respondent manufactures various other items hot rolled finished steel products in rectangular cross-section of
B thickness varying between 1.7 mm and 6.55 mm and width varying between 16.2 mm and 311.2 mm and rolled in coils which it supplies to the Indian Tube Company Limited at Jamshed-pur for making tubes and also to others. This article is subjected to Central Excise Duty under the Central Excises and Salt Act, 1944 (hereinafter called the Act). The dispute between the respondent and the appellants is that
C while the former describes the said manufactured product as strip the appellants classify it as skelp. This difference in classifying the product differently results in fiscal misfortune to the respondent since skelp is subjected to a higher Central Excise Duty than strip.

It may be stated that during the period from April 24, 1962 to February 28, 1964, the respondent described its product as skelp and
D it was subjected then to a lower rate of duty. From February 19, 1964, the respondent claimed that the aforesaid product be classified as strip since there had been a levy of higher duty for skelp. The Assistant Collector, Central Excise, Jamshedpur, who is the primary taxing authority, the Collector of Central Excise, Patna, in appeal, and the Central Government in revision rejected the contention of the respondent by successive orders, each authority upon its own test
E of the definition of the product as skelp. That led to the successful writ application of the respondent in the High Court resulting in this appeal.

In the forefront of his argument the learned Additional Solicitor General for the appellants relying upon two decisions of this Court,
F namely, *The Collector of Customs, Madras* v. *K. Ganga Setty*(1) and *V. V. Iyer of Bombay* v. *Jasjit Singh, Collector of Customs and Another*,(2) submitted that "it is primarily for the taxing authorities to determine the heads or entry under which any particular commodity fell; but that if in doing so, these authorities adopted a construction which no reasonable person could adopt i.e., if the construction was preverse then it was a case in which the Court was competent to inter-
G fere. In other words, if there were two constructions which an entry could reasonably bear, and one of them which was in favour of Revenue was adopted, the Court has no jurisdiction to interfere merely because the other interpretation favourable to the subject appeals to the Court as the better one to adopt". On the other hand with equal emphasis Mr. Palkhivala for the respondent submitted that an assessment without the application of an identifiable test is nothing but
H perverse and arbitrary. He submits that in the present case there was no identifiable test before the taxing authorities by which the

(1) [1963] 2 S. C. R. 277. (2) [1973] 1 S.C.C. 148.

product of the respondent could be held to be skelp and not strip subjecting the respondent to a heavier duty. According to the learned counsel there is no difference between sklep and strip, the two items being interchangeable.

It may be noted for our purpose that under section 3 of the Act Central Excise Duties are leviable on all excisable goods which are produced or manufactured in India at the rates set out in the First Schedule. Item No. 26AA in that Schedule relates to iron and steel products and mentions in sub-item (iii) therein flats, skelp and strips showing the rate of duty in the third column. Under rule 8 of the Central Excise Rules, 1944, made under section 37 of the Act, the Central Government may from time to time by notification in the official gazette exempt, subject to such conditions as may be specified in the notification, any excisable goods from whole or any part of the duty leviable on such goods. In exercise of the power under this rule the Central Government has made such exemptions in the rates of duty as have made it higher on skelp than on strip.

Before we proceed further we may notice how the various Excise authorities dealt with the matter at different stages. The first order is that of the Assistant Collector of Central Excise, Jamshedpur, which was on June 17, 1964. According to him "skelp is the name used in reference to a plate of wrought iron or steel used for making pipe or tubing by rolling the skelp into shape and lap welding or revetting edges together and strip is a term used to describe a flat rolled product of smaller cross-section than sheet or bar." He accordingly adopted the definition given in Marymen's Dictionary of Metalurgy. The order of the Collector of Central Excise in appeal made on October 24/29, 1964, shows that the authority noted the definition of strip as follows :—

> "Hot or cold rolled finished steel product in rectangular cross-section of thickness below 5 mm and of width below 800 mm and supplied in straight length".

This definition is substantially in conformity with the one given by the Indian Standards Institution (ISI). The appellate authority held that "since the products have not satisfied the above specifications, they have been correctly classified as 'skelp' by the Assistant Collector....". Then comes the order in revision of the Central Government of August 18, 1967. Inter alia it was held that "the product does have bevel edges peculiar to skelp and not found in strips. Under the circumstances, there is no doubt whatever that the product in question is correctly classified as skelp".

From the above three orders it is clear that the authorities were not at all certain about a uniform definition of 'skelp' distinguishing it from 'strip'. Extensive arguments were advanced at the bar with regard to the definitions of these two words. We may, therefore, look

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at the various definitions to which our attention has been drawn. Since the appellants largely upon the definitions given by the Indian Standards Institution, "an expert body", we will first note these definitions. The ISI's definitions of strip and skelp as given in IS 1956-1962 (amended upto July 1968) are as follows :—

B Upto 1965 the ISI gave no description of strip. It had defined skelp in 1962 as follows :—

"Skelp	Hot rolled narrow strip with rolled (square, slightly round or bevelled) edge.	
C Strip	A hot or cold rolled flat product, rolled in rectangular cross section of thickness 10 mm and below and supplied with mill, trimmed or sheared edge.	
	(a) Narrow strip-	strip (other than hoop) of width below 600 mm and supplied in straight length or in coil form.
	(b) Wide Strip-	Strip of width 600 mm above and supplied in coil form only."

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Upto 1965 the ISI gave no description of strip.

It had defined skelp in 1962 as follows :—

"Hot rolled strip with square or slightly bevelled edges, used for making welded tubes".

E In 1968 the ISI's definition of skelp stands as follows :—

"Hot rolled narrow strip with rolled (square, slightly round or bevelled) edge."

Strip was defined by the ISI for the first time in 1965 as follows:—

"Coiled Strip-	A hot or cold rolled flat product, rolled in rectangular cross section and supplied in coil form.
F Strip	A hot or cold rolled flat product, rolled in rectangular cross-section thickness below 5 mm and of width below 600mm and supplied in straight lengths".

The ISI's definition of strip given in 1968 is as follows :—

"A hot or cold rolled flat product, rolled in rectangular
G cross-section of thickness 10 mm and below and supplied with mill, trimmed or sheared edges.

(a) Narrow strip—Strip (other than hoop) of width below 600 mm and supplied in straight length or in coil form.

(b) Wide strip—Strip of width 600 mm and above and
H supplied in coil form only".

Annexure 'J' submitted by the respondent along with its rejoinder affidavit in the High Court at page 101 of the record, gives various

definitions of skelp taken from various dictionaries and treatises such as Hornor J. G. Dictionary of Terms, page 323, year 1952; Brandt D.J.C.—Manufacture of Iron & Steel, pages 318 and 319, year 1953; Henderson J.C.—Metallurgical Dictionary, page 192, year 1953; Backert A.O.L. A.B.C. of Iron & Steel, page 1912, year 1925—5th edition; Chamber's Technical Dictionary, year 1967. Similarly definition of strip is also given from these Dictionaries and books. It is also pointed out that there is no category of skelp mentioned in Brussels Nomenclature. British Standards 2094, Part 4; 1954, defines skelp as follows :—

> "Hot rolled strip with square or slightly bevelled edges used for making welded tubes".

Chamber's Technical Dictionary Revised Edition (Reprinted 1954) defines skelp as follows :—

> "Skelp—(P. 775) Mild steel strip from which tubes are made by drawing through a bell at welding temperature, to produce lap welded or butt welded tubes".

We may not add to the list but are satisfied that there are a large number of definitions out of which one can be picked up to satisfy the definition of skelp according to some authority and another definition to fit in with the concept of strip according to another authority. Since the duties on strip and skelp are not the same, it is absolutely necessary to define the word skelp so that there can be no doubt or confusion in the mind of either of the taxing authority or of the tax payer with regard to the tax liability qua skelp as opposed to strip. Since, however, there is no statutory definition of this controversial item different tests have naturally been resorted to by the different authorities and the same variation is discernible even in the affidavits of the appellants submitted before the High Court.

The short question, therefore, that arises for consideration is whether in the above background the High Court was right in interfering with the orders under article 226 of the Constitution. It is not for the High Court nor for this Court to come to a conclusion on facts as to whether the product can truly come under the description of skelp. That undoubtedly would require some evidence be taken at the level of the taxing authority provided, however, there is an identifiable, uniform and determinate test by which skelp can be properly distinguished from strip. In the mass of documents filed before us and the extensive arguments addressed at the bar with regard to the definitions culled from various dictionaries, hand-books and authorities, we are not at all surprised that the three authorities came to the same conclusion by depending upon their own chosen tests. A particular type of strip may according to certain definitions be skelp and according to others not skelp. This, however, cannot be permitted in a fiscal legislation which by all standards should adopt a clear definition of an excisable item which is incapable of giving rise to a confounding contro-

A versy as in this case unless the matter is beyond doubt in view of the popular meaning or meaning ascribed to the term in commercial parlance. In absence of any clear criterion to determine what is skelp and not strip, no useful purpose would be served by even remanding the matter to the Excise authorities for a decision after taking necessary evidence. It is only when a taxing law provides for a clear and B unequivocal test for determination as to whether a particular product would fall under strip of skelp it may be possible for the authorities to address itself to the evidence submitted by the parties in order to come to a decision on the basis of the test. This is, however, not possible in this case in view of the fact that there is no identifiable standard. The best way is to define the product for the purpose of excise duty in approximate terms demarcating clearly the distinction between C the two terms.

The absence of any identifiable standard would, therefore, naturally give rise to the scope for arbitrary assessment at the hands of different authorities. Whether this has happened in this case, as complained by the respondent citing the instance of the Hindustan Steel Company, Rourkela, it is not necessary for us to pursue in this D appeal. We are, therefore, unable to hold that the High Court has gone wrong in granting the reliefs prayed for.

The appellants strenuously emphasised upon the test relied upon in the Revisional order as to skelp having bevelled edges which, according to them, is peculiar to skelp and not to strip. But this does not E bear scrutiny as on the counter-affidavit of the Union of India in the High Court at page 57 of this record it shows that "as regards tested Hot rolled *strips,* the edges are never looked into, *they can be bevelled,* square or have Mill edge" (emphasis added). This is an admission of the appellants that strips may also have bevelled edges.

The two decisions relied upon by the appellants do not come to F their aid in this case since there is no identifiable standard or test to determine clearly which product can be skelp and not strip. In *Ganga Setty's* case (supra) the controversy arose with regard to whether "feed oats" fell within item 42 (fodder) or within item 32 (grain) of particular circular. Dealing with the matter this Court observed as follows :—

G > "....any particular species of grain cannot be excluded merely because it is capable of being used as cattle or horse feed".

The decision of the Customs authorities, therefore, this Court held, could not be characterised as perverse or mala fide calling for interference. Similarly following *Ganga Setty's* case (supra) in *Jasjit Singh's'* H case (supra) the conclusion and findings of the Customs authorities were accepted as reasonable. In both the above cases there were definite tests by which the particular article could be held to fall under one item and not under the other and the construction of the authorities

with regard to the scope of the particular entries was, therefore, held to be reasonable and not calling for interference by the court. The question that arises in the instant case is of a completely different nature as pointed out above there being no identifiable test reasonably capable of distinguishing skelp from strip. A

In the result the appeal fails and is dismissed with costs. B

P.H.P. *Appeal dismissed.*