A TATA IRON AND STEEL CO. LTD.

v.

COLLECTOR OF CENTRAL EXCISE

DECEMBER 16, 1994

B [R.M. SAHAI AND K.S. PARIPOORNAN, JJ.]

Central Excises and Salt Act, 1944: Tariff Schedule—Entries—Item 26 and 26AA—Scrap obtained in the course of manufacture of iron and steel—Conversion of scrap into ingots after remelting—Held duty on scrap was leviable under item 26 and not under item 26AA(i).

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Words and Phrases:

'Scrap', 'Semi finished product'—What is.

The appellant-company was selling scrap, obtained by it in the D **course of manufacture of iron and steel products, to different parties for manufacturing steel ingots out of the scrap. On the question whether the scrap was dutiable under item 26 or 26AA of the Tariff Schedule the Central Excise and Gold (Control) Appellate Tribunal held that duty was to be levied under item 26AA. The Tribunal relied on a price circular issued by the Controller of Iron and Steel classifying** E **scrap into industrial, re-rolling and melting scrap and fixing different rate for each and every size of the scrap. Further the Tribunal held that even through scrap sold by the appellant-company was melted to produce ingots but that was not determinative of its character as what was melted was not melting scrap because of its size, therefore, it did** F **not attract levy under item 26 but under item 26AA being something like sub-standard goods. The Tribunal also held that since the appellant company did not dispute that the scrap produced by it could be industrial scrap, the scrap produced by it could not be taken to be re-melting scrap. Against the decision of the Tribunal an appeal was preferred in this Court.**

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Allowing the appeal and setting aside the order of the Tribunal, this Court

HELD: 1. The scrap cleared by the appellant in each year having been melted and re-used as iron ingots was remelting scrap dutiable H **under Item 26 of the Tariff Schedule. Item 26 purports to levy duty on**

re-melting scrap. The Tribunal having found that the scrap produced by the appellant was remelted the products cleared by the appellant satisfied the test of being re-melting scrap. [652 F, 652 D]

2. Under Entry 26AA what is exigible to duty is semi finished steel including blooms, billets, slabs, sheet bars etc. Semi finished may mean between raw material and finished products. But it cannot be described as scrap. A sub-standard bloom or billet is steel bloom or billet. But the scrap of billet or bloom would not be the same thing as semi finished products. In the commercial sense, scrap and semi-finished products cannot be understood in the same sense. The attempt of the Department, therefore, to levy duty on scrap under Item 26AA was not correct. [651 H, 652 A to B]

3. Neither reasons given by the Tribunal appears to be sound. Price fixation by Controller of Iron and Steel could not furnish basis for interpreting the entry, for levying duty under the Central Excises and Salt Act, 1944. Size of scrap may be relevant for fixation of price but it could not reflect on the nature of scrap. [652 E]

4. A semi-finished product is one which requires some further work or treatment to become serviceable. But it cannot apply to scrap as it is normally understood as something which is not serviceable. 'Scrap' according to dictionary means, 'a small piece cut or broken from something; fragment'. In commercial parlance 'scrap' is normally understood as 'waste'. But it may be used for re-rolling or re-melting for bringing out raw material to be used for producing finished products. [650 G, 651 H]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3196-96A of 1986 etc. etc.

From the Judgment and Order dated 24/27.2.86 of the Central Excise (Customs) and Gold (Control) Appellate Tribunal, New Delhi in A.No.E.B./SB/T/142/76-B and 1844 of 1985-B.

Soli J. Sorabjee, A. Haksar, Ms. Amrita Mitra and Ms. Sonu Bhatnagar for JBD and Co., for the Appellant.

Subba Rao and P. Parmeswaran for the Respondent.

The Judgment of the Court was delivered by

A **R.M. SAHAI, J.** The only dispute that arises for consideration in these appeals directed against the Order of Central Excise and Gold (Control) Appellate Tribunal is whether scrap obtained by the appellant in course of manufacture of iron and steel and steel products was dutiable under Item 26 or 26AA of the Tariff Schedule.

B Since facts are not in dispute, and the duty is sought to be levied on scrap obtained by the appellant in course of manufacture of iron and steel products and supplied by it to M/s. Tata Yodogawa Ltd. on payment of duty for conversion of scrap into ingots after re-melting which was actually re-melted and re-used by the appellant as ingot, it is appropriate to extract the two entries relating to steel ingots and iron or steel products:-

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"26.— Steel Ingots including Scrap.	Rs.100 per Steel Melting metric tonne."

"26AA.– Iron or steel products, the following namely:-

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(i)	Semi-finished steel including blooms, billets, slabs, sheet bars, tin bars, and hoe bars.	Rs.Three hundred and fifty per metric tonne

(ii).....

E (iii).....

(iv).....

(v).....

F Item 26 levies duty on raw material. In commercial parlance steel ingots are used for producing steel products. Raw melting scrap serves the same purpose. Item 26AA deals with iron and steel products. What are those products is mentioned in clauses (i) to (v) of the item. These appeals are concerned with the scope of clause (i) . It deals with semi-finished steel. A semifinished product is one which requires some further work or G treatment to become serviceable. But it cannot apply to scrap as it is normally understood as something which is not serviceable. Even the Tribunal held that scrap produced by appellant, 'did not strictly answer to the description but they can resemble or closely resemble them, qualifying to be called sub-standard blooms or slabs or bars or channels.' But a sub-standard article is not scrap as understood in commercial parlance or trade H circle. Two reasons have been given by the Tribunal for including scrap of

iron and steel in Item 26AA— one, price circular issued by Controller of Iron and Steel classifying scrap into industrial, re-rolling and melting scrap and fixing different rate for each and every size of scrap. The Tribunal held that even though scrap sold by the appellant to M/s. Tata Yodogawa Ltd. was melted to produce ingots but that was not determinative of its character as what was melted was not melting scrap because of its size, therefore, it did not attract levy under Item 26 but under Item 26AA being something like sub-standard goods.

When the matter was pending in appeal the Assistant Collector of Central Excise wrote a letter to the Director of Inspection (Metallurgical), Jamshedpur, requesting him to give his views whether the scrap sold by the appellant under agreement to different parties for manufacturing steel ingots out of the scrap could be described as re-melting scrap as the Department on examining the invoices found that maximum length of such scrap of various products like rails, billets, plates, lee, channels, angles, beams etc. were only up to 1.5 meters and such scraps, according to Iron and Steel Controller's specification of 1959, could not be classified as re-melting scrap. This letter was replied by the Director and it was mentioned that from the letter sent by the Assistant Collector it appeared that the size and dimension of the scrap was taken as the sole yardstick for classification and, 'if that be the case than the classification of scraps solely on the basis of size factor can hardly be considered a very rational classification.' The Director further was of the opinion that, 'the steel manufacturing operations generate scrap which is in turn re-used not only in the steel making process but also in plant furnaces and cupolas. This scrap is called process scrap or "arisings" of steel mills. Cuttings of rails, billets, plates, axles, channels etc. supplied to M/s Tata Yadogawa Ltd. are 'arisings' of TISCO's mills. These scraps (process scrap) are usually treated as melting scraps in developed countries as well as in India. There are different grades of melting scrap— heavy, medium and light. 'He further observed that the technology has changed and in view of the developments in iron and steel industry the size factor could not always be main criterion for the classification of steel scraps.

Although this letter is not relevant but it goes to demonstrate that size of the scrap is not determinative whether it was melting scrap or not. 'Scrap' according to dictionary means, 'a small piece cut or broken from something; fragment'. In commercial parlance 'scrap' is normally understood as 'waste'. But it may be used for re-rolling or re-melting for bringing out raw material to be used for producing finished products. Under Entry 26AA what is exigible to duty is semi-finished steel including

A blooms, billets, slabs, sheet bars etc. Semi finished may mean between raw material and finished products. But it cannot be described as scrap. A sub-standard bloom or billet is steel bloom or billet. But the scrap of billet or bloom would not be the same thing as semi-finished product. In the commercial sense, scrap and semi-finished products cannot be understood in the same sense. The attempt of the Department, therefore, to levy duty on
B scrap under Item 26AA was not correct.

Melting scrap is defined as:–

> "Scrap which cannot be used for any other purposes but can be charged into furnace for melting should be classified as
C melting scrap".

The Tribunal held that since the appellant did not dispute that the scrap produced by the appellant could be industrial scrap, the scrap produced by it could not be taken to be re-melting scrap. Item 26 purports to levy duty on re-melting scrap. The Tribunal having found that the scrap produced by
D the appellant was remelted the products cleared by the appellant satisfied the test of being re-melting scrap.

Neither reasons given by the Tribunal, therefore, appears to be sound. Price fixation by Controller of Iron and Steel could not furnish basis for interpreting the entry, for levying duty under the Central Excise and Salt
E Act, 1944. The Controller might have classified scrap depending on size and terming it as rolling, melting and industrial scrap but that could not render it as semi-finished steel products. Size of scrap may be relevant for fixation of price but it could not reflect on the nature of scrap.

In the result, the appeals are allowed and the order passed by the
F Tribunal is set aside. The question of law raised by the appellant is decided by saying that the scrap cleared by the appellant in each year having been melted and re-used as iron ingot was remelting scrap dutiable under Item 26 of the Tariff Schedule.

The appellant shall be entitled to its costs.

G T.N.A. Appeal allowed.