COLLECTOR OF CENTRAL EXCISE

v.

CALCUTTA STEEL INDUSTRIES AND ORS.

OCTOBER 27, 1988

[SABYASACHI MUKHARJI AND S. RANGANATHAN, JJ.]

Central Excises and Salt Act, 1944—Central Excise Tariff Items 26AA(ia) and 26AA(ii)—Hoop and Strip whether assessable to duty.

The respondent company filed revised classification lists classifying all rectangular products of thickness below 3.0 mm manufactured by them as bars covered by Tariff Item 26AA(ia) of the Central Excise Tariff. The Asstt. Collector, Central Excise took the view that rectangular products of thickness less than 3.0 mm and of width less than 75 mm fell under the definition of 'Hoops' and merit classification under Tariff Item 26AA(ii) and exigible to the appropriate duty. The respondent preferred an appeal before the Collector of Central Excise who held that the product fell within the definition of 'Hoops' and upheld the order of the Asstt. Collector.

The respondent appealed to the Tribunal which held that the flat product of thickness less than 3.0 mm and a width of less than 75 mm was classifiable as 'bars' as claimed by the respondent company and not as 'Hoops' and allowed the appeals.

The Department therefore filed the appeals under Section 35L(b) of the Central Excises & Salt Act, 1944 before this Court.

Dismissing the appeals, this Court,

HELD: If the revenue wants to tax a particular goods known as such then the onus is on the Revenue. [600F]

'Hoop' is made either by slitting coiled strip rolled in multiple width, into narrow coiled strip of the desired width, or from narrow coiled strip with a hot-rolled or mill edge and the type and width of hoop being produced influences the choice of the method used. [599B]

Curled hoop is made by a pinch-roll and curved guide-shoe arrangement that permits the hoop to take a circular form. A straight length hoop is produced merely by removing the curved guide-shoe. [599D]

Straight length is not a short length, it is long. [599E]

The fact is that they were produced in a mill that could produce hoops and strips. Their lengths are not such as to place them in the same class as hoops. Having, therefore, regard to this and the relevant tariff item, the Tribunal came to the conclusion that it will be more appropriate to assess them under Item 26AA(ia) than Item 26AA(ii). [599G-H; 600A]

South Bihar Sugar Mills Ltd. v. *Union of India & Ors.*, **[1968] 3 S.C.R. 21, referred to.**

In an appeal under Section 35L(b) this Court has to see the propriety and the correctness of adjudication. There was no misdirection in law nor any non-consideration of facts. There is no exclusion from consideration of legitimate proper materials. [600F-G]

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1671-87 of 1987.

From the Judgment and order dated 22.4.1987 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. 1546, 1547 etc. in Order No. 267 to 283 of 1987 BI.

M.K. Banerjee, Solicitor General, R.P. Srivastava and P. Parmeswarn for the Appellants.

Soli J. Sorabji, K.K. Patel, Rajiv Dutta and R.S. Sodhi for the Respondents.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. These are appeals from the decision of the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as 'CEGAT') under Section 35L(b) of the Central Excises & Salt Act, 1944 (hereinafter called 'the Act'). The respondent Calcutta Steel Industries filed revised classification lists wherein they had classified all rectangular products of thickness below 3.0 mm manufactured by them as bars covered by Tariff item 26AA(ia) of the Central Excise Tariff. The Assistant Collector, Central Excise was of the tentative view that rectangular products of thickness less than 3.0 mm and of width less than 75 mm conform to the definition of Hoops and merit classification under item (ii) of Tariff Item 26AA attracting effective rate of duty of Rs.450 per MT less the

reduction provided for under Notification No. 55/80 dated 13th May, 1980. The respondents were, therefore, called upon to show cause as to why the classification list should not be amended and duty charged accordingly. The respondents submitted their written statement and requested for a personal hearing. The matter came up for adjudication before the Assistant Collector, Central Excise. He held *inter alia* that the type of Mills used for the manufacture was irrelevant. He relied on the definition of "Hoops" evolved in consultation with the Ministry of Steel and the Indian Standard Institution. The revised definition was as follows:

> "The finished product, generally of cross-section with edges of controlled contour and of thickness 3.0 mm and over width 400 mm and below and supplied in straight lenths. The product shall have rolled edges only (square or slightly rounded). This group also includes flat bars with bulb that has swelling on one or two phases of the same edge under width of less than 400 mm.

The Assistant Collector, Central Excise on the basis of certain discussion, in his order, was of the view that rectangular products of thickness less than 3.0 mm and of width less than 75 mm were hoops and were correctly classified under sub-item (ii) of Tariff item 26AA of the Central Excise Tariff and accordingly exigible to the appropriate duty. The revised classification list was accordingly modified and approved. The respondents preferred appeals to the Collector of Central Excise (Appeals). The Collector considered the Indian Standard 1956-62 (2nd reprint May 1975) which defined "Hoops" as follows:

> "5.54 HOOP (bailing, hoop iron)—a Hot Rolled Flat Product, rolled in rectangular section of thickness less than 3.0 mm and width less than 75.0 mm."

He held that according to the specifications the product in question sequarely fell within the above definition particularly when the description of the Tariff Items covered "Hoops, all sorts". The Appellate Collector also considered the definition of "Hoop and Strips" in the Brussels Tariff Nomenclature which described these as follows:

> "*Hoop and Strip (heading No. 73.12)*
>
> rolled products with sheared or unsheared edges of rectangular section, of a thickness set exceeding 6 milli-

A metres, of width not exceeding 500 millimetres and of such dimension that the thickness does not exceed one-tenth of the width, in straight strips, coils or flattened coils."

He accordingly held that this definition showed that the edges of the product in question might be sheared or unsheared and the pro-
B ducts might be in straight lengths or in coils. He also held that the nature or type of mill cannot by itself be the determining factor of the issue in dispute which has to be determined taking into account all relevant considerations, viz., the phraseology and the scope of the Tariff Entry, the trade practice terminology, well-recognised standard national and international technical literature. In the result, the
C Appellate Collector of Central Excise *inter alia* for the reasons stated above, found no reason to interfere with the order of the Assistant Collector, Central Excise which was accordingly upheld.

The respondents preferred appeals to the Tribunal. The Tribunal allowed the appeals and held that the flat product of thickness less
D than 3.0 mm and a width of less than 75 mm is classifiable as bars as claimed by the respondents herein and not as hoops as held by the Assistant Collector, Central Excise and upheld by the Appellate Collector of Central Excise. in allowing the appeals, the Tribunal referred to U.S. Steel Publications (The shaping and treating of steel) wherein it is stated as follows:

E

> "goods have been rolled in a bar mill and have not been subjected to the process mentioned by the book for producing hoops and that they were not meant for bailing or packaging which a hoop is meant for."

F The Tribunal in its order discussed various aspects of the matter. The Tribunal noted that the Collector had stated and what are the different categories. In U.S. Steel Publication (The Making, Shaping and Treating of Steels) edited by Herald E. Mc. Gannon 9th Edition whom the Tribunal has described as an authority on the Steel and we presume he is, there are some observations at page 808 under the
G heading "Narrow Flat—rolled products" which are relevant. There, "Hoops" have been described as follows:

> "Hoop—There are four general classification of this type of products:

H 1. Tight cooperage hoop for barrels to hold liquid.

2. Slack barrell hoop for barrels to hold dry products. A

3. Tobacco barrel hogshead hoop, and

4. Special hoop for special packages."

It has further to be noted that "hoop" is made either by slitting B coiled strip rolled in multiple width, into narrow coiled strip of the desired width, or from narrow coiled strip with a not-rolled or mill edge and the type and width of hoop being produced influences the choice of the method used. It further appears that the method of the products in question is not one of the methods listed in this authoritative work for hoops. The so called hoops were not produced by slitting C coiled strip nor rolled from narrow coiled strip, with hot rolled or mill edge. The article, as has been noted, says that "hoop" is produced as 'curled hoop' or 'a straight length'. Curled hoop is made by a pinch-roll and curved guide-shoe arrangement that permits the hoop to take a circular form. A straight length hoop is produced merely by removing the curved guide shoe. D

The Tribunal was conscious that the goods in question were neither curled hoops nor straight length. In those circumstances, it was necessary to understand clearly that the "straight length" used in this book is not the straight length understood by the department which seems to think that any short straight length is the straight length E signified by the term for these products. It is nothing of the kind as can be seen from the above passage quoted from the authority. Straight length is not a short length, it is long. The means of producing the goods is completely different from what is generally written. The Tribunal was justified in holding that it is not possible to agree with the department that the manner of production of the goods can be taken F into account.

It has also to be borne in mind that the very nature of the mill was a criteria to decide the nature of the product manufactured. Further, however, taking into account the nature and type of the mill cannot itself be the determining factor in the issue in dispute. The G Tribunal also took into account that these are produced in a mill which cannot produce hoops or strips. The Tribunal found the fact that they were produced in a mill that could produce hoops and strips. Their lengths are not such as to place them in the same class as hoops. Having, therefore, regard to this and the relevant tariff item, the Tribunal came to the conclusion that it will be more appropriate to H

A assess them under item 26AA(ia) than under Item 26AA(ii). The Tribunal has considered all the relevant facts. There was no misdirection on the facts. All proper and relevant materials relevant for the determination of the question before the Tribunal have been applied to. Reliance was placed on certain observations of this Court in *South Bihar Sugar Mills Ltd.* v. *Union of India & Ors.*, [1968] 3 SCR 21.
B There, this Court was dealing with Item 14A and the appellants' manufacturing mixture of gases containing carbon dioxide by burning lime-stone with coke in using only the carbon dioxide from the mixture for refining sugarcane juice and for producing soda ash by solvay ammonia soda process—Whether the mixture of gases was kiln gas or compressed carbon dioxide covered by Item 14-H in Schedule I to
C the Act. It was held by this Court that the gas generated by the appellant companies was kiln gas and not carbon as known to the trade, i.e., to those who deal in it or who use it. The kiln gas in question therefore is neither carbon dioxide nor compressed carbon dioxide known as such to the commercial community and therefore
D cannot attract Item 14-H in the First Schedule. It was held that it was incorrect to say that because the sugar manufacturer wants carbon dioxide for carbonisation purposes and sets up a kiln for it that he produces carbon dioxide and not kiln gas. In fact what he produces is a mixture known both to trade and science as kiln gas one of the constituents of which is no doubt, carbon dioxide. The kiln gas which is
E generated in these cases is admittedly never liquified nor solidified and is therefore neither liquified nor solidified carbon dioxide, assuming that it can be termed carbon dioxide. It cannot be called compressed carbon dioxide as understood in the market among those who deal in compressed carbon dioxide. If the Revenue wants to tax a particular goods known as such then the onus is on the Revenue. That they have
F failed. The Tribunal has analysed all the aspects. In appeal, we have to see the propriety and the correctness of adjudication. Having examined the aspects from all angles, we find that there was no misdirection in law nor any non-consideration of facts. There is no exclusion from consideration of legitimate and proper materials. In the premises, we have also examined the ultimate conclusion of the Tri-
G bunal. That conclusion appeals to us. It follows irresistibly from the other premises as indicated hereinbefore. In the premises, the appeals fail and are accordingly dismissed.

S.K.A. Appeals dismissed.