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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/2645/1993 - EX[DB] Date **25/02/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S RAMDARSHAN ROLLING MILLS,
TEJPUR BRIDGE, A.B. ROAD, POST –
RAJENDRA NAGAR, INDORE-452012

M/S RAMDARSHAN ROLLING MILLS Appellant

Vs

C.C.E. INDORE **MISC ORDER NO.176/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No. 238/ 2011 EX[DB]** dated 22-2-11
passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)
2. Adv. / Consult
MR.L.P. ASTHANA & MS REENA KHAIR
R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.
3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file
15. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 22.02.2011

Excise Misc. Application No. 951 of 2010 in
Excise Appeal No. 2645 of 1993

M/s Ram Darshan Rolling Mills — Appellants

Vs.

CCE, Indore — Respondent

Appearance:

Rep. by Sh. L.P. Asthana, Advocate for the appellants.
Rep. by Sh. for the respondent.

Coram: **Hon'ble Sh. Justice R.M.S. Khandeparkar, President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

Misc ORAL ORDER NO. 176/2011-EX,

Per: Shri Justice R.M.S. Khandeparkar:

Heard. Miscellaneous application is allowed. Appeal is directed to be listed for hearing forthwith. Application stands disposed of.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

Pant

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Court No. I

Date of Hearing/Decision: 22.02.2011

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Excise Appeal No. 2645 of 1993
[Arising out of order in original No. 22/Comm/C.Ex./93/ADJ dated 23.7.93 passed by the Commissioner, Central Excise & Customs, Indore].

M/s Ram Darshan Rolling Mills — Appellants
[Rep. by Shri L.P. Asthana, Advocate]

Vs.

CCE, Indore — Respondent
[Rep. by Shri B.K. Singh, Jt. CDR]

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President
Hon'ble Sh. Rakesh Kumar, Member (Technical)

FINAL ORAL ORDER NO. 238/2011-EX

Per: Shri Justice R.M.S. Khandeparkar:

This appeal was heard in terms of order passed today in Excise Misc. Application No. 951 of 2010 as well as in terms of direction received from Hon'ble High Court of Madhya Pradesh in Writ Petition No. 46 of 2011 by order dated 12.01.2011.

2. The present appeal arises from order dated 23.07.1993 passed by the Collector, Excise department, Indore. By the impugned order, demand of duty to the tune of Rs. 8,02,587.06 was confirmed alongwith penalty of Rs. 1,50,000/- and confiscation of the seized goods with option to redeem the same on payment of redemption fine of Rs. 75,000/-. The appellants were engaged in manufacture of iron and steel products classifiable under chapter heading 214.90 of the Central Excise Tariff Act, 1985 as was in force at the relevant time. The product manufactured by the appellants and relevant for the consideration comprises of twisted iron and steel bars. The appellants claimed benefit of exemption under Notification No. 202/88-CE dated 20.05.1988 read with Notification No. 170/89-CE dated 16.08.1989. The department sought to deny the benefit of the said notification to the said product and, therefore, issued show cause notice dated 12th/14th December, 1989 to the appellants. The same was contested by the appellants while contending that the Notification No. 170/89-CE which extended the benefit granted under Notification No. 202/88-CE to the twisted bars, the product manufactured by the appellants being clarificatory in nature and, therefore, was retrospective and hence the appellants were entitled for the benefit under the said notification. The Collector rejected the contention raised on behalf of the appellants and passed the impugned order.

3. Learned Advocate for the appellants placing reliance in the decision in the matter of **Apex Steels (P) Ltd.**, v. **Collector** reported in 1995 (80) ELT 368 (Tribunal) submitted that the three Member Bench of CEGAT has already held that the Notification No. 170/89 was clarificatory notification by which the benefit of exemption available under Notification No. 202/88-CE was extended to the product manufactured by the appellants and hence the appellants were justified in availing the benefit under the said notification.

4. The Joint CDR appearing on behalf of the department submitted that the Collector had no benefit of going through the order passed by the CEGAT in Apex Steels (P) Ltd. case as the said decision was delivered much after the period of passing of the impugned order.

5. The CEGAT in Apex Steels (P) Ltd. case while dealing with the scope of the Notification No. 170/89-CE read with Notification No. 202/88-CE had ruled thus:-

> "On a plain reading of the Notification No. 202/88-CE 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 deparmental'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-CE 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 appellants 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 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 departmental 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)".

6. We have not been shown any ruling by the Apex Court or any High Court overruling the decision delivered by the CEGAT relied upon by the learned Advocate for the appellants. The said decision clearly lays down the

law that Notification No. 170/89-CE was clarificatory in nature and, therefore, the benefit of exemption available under Notification No. 202/88-CE was extended to the twisted bars retrospectively. Obviously, therefore, the appellants were entitled to avail the benefit of the said notification during the period from May, 1988 to June, 1989 which is the period for which the show cause notice was issued. Obviously, therefore, the impugned order cannot be sustained and is liable to be set aside while accepting the contention sought to be raised on behalf of the appellants. Hence, the appeal succeeds. The impugned order is hereby quashed and set aside and appellants are held to be entitled for the benefit of the said notification for the relevant period. Appeal is accordingly allowed.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

Pant