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MULTIMETALS LTD.

v.

ASSISTANT COLLECTOR, CENTRAL EXCISE, KOTA AND ORS.

DECEMBER 10, 1991

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[K. JAGANNATHA SHETTY, V. RAMASWAMI AND
YOGESHWAR DAYAL, JJ.]

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Central Excises and Salt Act, 1944/Central Excise Rules, 1944, s.3, First Schedule—Item 26A/r.8(1) & Notification dated 28.12.1963—Copper, copper alloys and copper pipes and tubes—Excise duty—Exemption on copper pipes and tubes in reference to duty paid copper and copper alloys used in the manufacture—Extent of—Whether includes “manufacturing loss” also.

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Under s.3 of the Central Excises and Salt Act, 1944, excise duty is payable on copper and copper alloys in any crude form as also pipes and tubes made thereof, at the rates set forth in Item 26A of the First Schedule to the Act. The Central Government Notification dated 28.12.1963 exempted from duty, pipes and tubes of copper and copper alloys to the extent equivalent to the duty already paid on the copper and copper alloys used in crude form in their manufacture.

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The appellant-Company claimed exemption on the quantity of the raw material used by it in the manufacture of pipes and tubes including the manufacturing loss contending that the Notification intended to give relief to the extent of the duty already paid on the copper and copper alloys in its crude form used in the manufacture. The Department was of the view that the exemption from excise duty was available on the weight of finished products and not on the entire quantity of copper used in the manufacture of pipes and tubes.

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The Appellate Authority—Collector of Central Excise—found that there was a manufacturing loss. However, the High Court held that the exemption was to be calculated on the basis of the weight of the raw material actually used for the purpose of manufacture of pipes and tubes. Aggrieved, the appellant-manufacturer filed the appeal before this Court.

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On the question: whether the duty referable to the portion of the copper and copper alloys used in crude form which is lost in the manufacturing process also should get rebate while assessing for excise duty on the pipes and tubes of copper and copper alloys,

Dismissing the appeal, this Court,

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HELD: 1. Even the manufacturing loss will have to be taken into account in determining the relief to be provided under the Notification dated 28.12.1963. [p. 296 EF]

The 'manufacturing loss' forms part of the raw material "used" in the manufacture though not reflected in the final product. By the Notification the relief to be given to the manufacturer was in respect of the duty already paid on the raw material used in the manufacture of the final product. The relief has to be given to the extent of the duty paid on the input material and not with reference to the quantity which ultimately forms part of the final product. [p. 296 D-E]

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M/s Swadeshi Polytex Ltd. v. Collector of Central Excise, [1990] 2 SCC 358, relied on.

2. Due to cutting the copper wire, melting in electric furnaces and remelting in the process of manufacture, a portion of the copper and copper alloys in its crude form which was used as the raw material is permanently lost. [p. 295G]

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Duty paid copper and copper alloys in crude form are used in the manufacture of pipes and tubes. Rebate is to be equivalent to the duty already paid on copper and copper alloys in its crude form, that is to say on the input. The idea seems to be that to the extent of the duty paid on the raw material used exemption has to be given and that has no reference to what ultimately found part of the finished product. [p. 296 BC]

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It is the duty paid on the input material that is relevant and not the duty referable to the ultimate component of the final product. [p. 296 CD]

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3. It is for the manufacturer who claims the relief to prove the loss. There are also scientific methods of arriving at the loss. [p. 296 FG]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4918 of 1985.

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From the Judgment and Order dated 27.2.1981 of the Rajasthan High Court in D.B. Civil Writ Petition No. 1156 of 1971.

Harish N. Salve, S.K. Jain, Vibhu Bakhru and S.D. Sharma for the Appellant.

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- A M. Gaurishankar Murthy, A.K. Srivastava, P.Parmeshwaran(NP) and
C.V. Subba Rao(NP) for the Respondents.

The Judgment of the Court was delivered by

- B V. RAMASWAMI, J. Under section 3 of the Central Excises and Salt
Act, 1944 excise duty is payable on all excisable goods produced or manufac-
tured in India at the rates set forth in the Schedule to the Central Excise Tariff
Act. Item 26A of the Schedule to the Tariff Act reads as follows:

"26A. COPPER AND COPPER ALLOYS CONTAINING NOT
LESS THAN FIFTY PER CENT BY WEIGHT OR COPPER.

- | | | |
|---|--|-------------------------------------|
| C | (1) In any crude form including
ingots, bars blocks, slabs, billets,
shote and pellets. | Rs. 1,500 per
metric tonne. |
| D | (2) Manufactures, the following
namely, plates, sheets, circles,
strips and foils in any form or size. | Rs. 2,000 per
metric tonne |
| | (3) Pipes and tubes | 10 per cent
<i>ad valorem</i> ." |

- E As per this entry both copper and copper alloys in any crude form as also
pipes and tubes of copper and copper alloys are excisable. By a Notification
dated 28th December, 1963, the Government granted certain exemption from
excise duty equivalent to the duty that was paid on the copper and copper alloys
in any crude form in respect of pipes and tubes of copper and copper alloys.
F Since an interpretation of this Notification arises for consideration in this case
that may usefully be quoted here.

- G "GSR. In exercise of the powers conferred by sub-rule (i) of Rule
8 of the Central Excise Rules, 1944, the Central Government
hereby exempts pipes and tubes of copper and copper alloys,
falling under sub-item (3) of item No. 26A of the First Schedule to
Central Excises and Salt Act, 1944 (1 of 1944) in the manufacture
of which duty paid copper or copper alloy in any crude form or
manufacture thereof, are used, from so much of the duty of excise
leviable thereon, as is equivalent to the duty already paid under
sub-item (1) and/or (2) of the said item of copper or copper alloys
H in any crude form or manufacture thereof."

While it is the case of the appellant that it was entitled to exemption from excise duty under this Notification on the quantity of the raw material used by it in the manufacture of pipes and tubes including the manufacturing loss the Department contended that the exemption from excise duty was available only on the quantity of copper contents available in the weight of finished products and not on the entire quantity of copper used in the manufacture of pipes and tubes. Though there was some dispute at an initial stage as to whether in the manufacture of pipes and tubes any quantity of raw material is lost or as a result of the said loss during the process of manufacture the weight of the final finished product did not represent the weight of the metal used as raw material, in view of the fact that the Appellate Authority, namely, the Collector of Central Excise has found that there was a manufacturing loss and that the claim of the appellant that the lost quantity was 6.97% appears to be genuine, we proceed on the basis that there was certain manufacturing loss. The High Court was of the view that the Notification granted exemption "only on pipes and tubes, which means that the exemption has to be calculated on the basis of the weight of the raw material actually used for the purpose of manufacture of pipes and tubes."

Mr. Harish Salve, learned counsel for the appellant contended that the Notification intended to and on plain reading it did, exempt copper and copper alloys used in the manufacture of pipes and tubes of copper and copper alloys and that the intention was to give relief to the extent of the duty already paid on the copper or copper alloys in its crude form which were used in the manufacture. If this is kept in mind according to the learned counsel the entire material that was used for the manufacture of pipes and tubes including the manufacturing loss will have to be taken into account and to the extent of the duty paid thereon the relief will have to be given. On the other hand Mr. Gouri Shanker Murthy, the learned Senior counsel appearing for the Revenue strenuously contended that rebate of duty of what we may call manufacturing loss is not envisaged at all under the Notification and that only that quantity actually forms part of the pipes or tubes alone has to be taken into account for the purpose of rebate on duty.

We have considered the rival contentions of the parties. It is seen from the facts as appear from the pleadings and the orders that due to cutting the copper wire, melting in electric furnaces and re-melting in the process of manufacture a portion of the copper and copper alloys in its crude form which was used as the raw material is permanently lost. We are not concerned as to the exact quantity of loss in this cast but with a question of interpretation as to whether the duty referable to that portion which is lost also should get rebate while assessing for excise duty on the pipes and tubes of copper and copper

- A alloys. The emphasis of the learned counsel for the Revenue was that the levy of excise duty was on pipes and tubes and the rebate related to that of copper and copper alloys content thereof and, therefore, only that quantity that was found forming the pipe or tube could get relief and not the entire quantity which was put in the process of manufacture. This argument does not give full weight
- B to the words "in the manufacture of which duty paid copper or copper alloys in any crude form are used, from so much of duty of excise leviable thereon as is equivalent to the duty already paid under sub-item (1) and/or (2) of the said item of copper and copper alloys in any crude form or manufacture thereof
- C Duty paid copper and copper alloys in crude form are used in the manufacture of pipes and tubes. Rebate is to be equivalent to the duty already paid on copper and copper alloys in its crude form, that is to say on the input. The idea seems to be that to the extent of the duty paid on the raw material used exemption has to be given and that has no reference to what ultimately found part of the finished product. It is the duty paid on the input material that is relevant and
- D not the duty referable to the ultimate component of the final product. So far as the manufacturer is concerned he has used copper and copper alloys of a particular quantity in the manufacture of pipes and tubes. The 'manufacturing loss' forms part of the raw material "used" in the manufacture though not reflected in the final product. The relief, as we understand the Notification, that
- E has to be given to the manufacturer was in respect of the duty already paid on the raw material used in the manufacture of the final product. That is the relief has to be given to the extent of the duty paid on the input material and not with reference to the quantity which ultimately forms part of the final product. This is also the ratio of the judgment in *M/s Swadeshi Polytex Ltd. v. Collector of*
- F *Central Excise*, [1990] 2 SCC 358. So understood we have no doubt that even the manufacturing loss will have to be taken into account in determining the relief to be provided under the said Notification. We are also unable to understand the argument of the Revenue based on the difficulty in arriving at the manufacturing loss. If there is any difficulty it is for the manufacture who
- G claims the relief to prove the loss. There are also scientific methods of arriving at the loss.

Accordingly, we allow the appeal set aside the order of the High Court

and the Revenue Authorities and direct the respondents to give the benefit of A
exemption of duty in respect of loss in the process of manufacture. However,
there will be no order as to costs.

R.P.

Appeal dismissed.