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## UNION OF INDIA &amp; ORS.

v.

TATA IRON &amp; STEEL CO. LTD., JAMSHEDPUR

December 17, 1975

B

[A. N. RAY, C.J., M. H. BEG, R. S. SARKARIA AND  
P. N. SHINGHAL, JJ.]

*Central Excises and Salt Act, 1944—Section 3 read with First Schedule, items 25 and 26—Notification 30/60 dated 1st March, 1960 in terms of Rule 8(1) of the Central Excise Rules, 1944 exempting steel ingots in which duty-paid pig iron is used—Interpretation of the Notification—Whether exemption is not available if duty-paid pig iron is mixed with other non-duty-paid materials.*

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The respondent manufactures, as part of iron and steel products, ingot moulds and bottom stools from pig iron for use in steel melting shops. Under item 25 and 26 and the first Schedule to the Central Excises and Salt Act, 1944, the respondent paid excise duty leviable on "pig iron and steel ingots" respectively.

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In terms of Rule 8(1) of the Central Excise Rules, 1944, by a notification No. 30/60, the Central Government granted exemption to steel ingots falling under item 26 of the First Schedule if produced out of scraps obtained from duty-paid pig irons. Since unserviceable ingot moulds and bottom stools are also scrapped into pieces and remelted in an admixture with other non-duty paid scraps and hot metal in the manufacture of steel ingots, the respondent claimed a set off of duty to the extent of duty paid on pig iron being the remelted scrap used in the manufacture of steel ingots which was rejected by the Assistant Collector of Central Excise. The appeal before the Collector of Central Excise and the revision before the Ministry of Finance were dismissed, interpreting the Notification No. 30/60 as not applicable when duty-paid pig iron is mixed with other non-duty materials.

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When the orders of the Revenue Authority were challenged in the High Court, the High Court quashed them holding that (i) the Revenue Authorities fell into the error of interpreting Notification No. 30/60 by confining exemption to steel ingots in which "entirely" "exclusively or only" duty-paid pig iron is used since no such words were used in the Notification; and (ii) the Notification would have to be interpreted in a manner that the statute would not cast a burden twice over the payment of tax unless the language of the statute is so compellingly certain to that effect.

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Dismissing the appeal by certificate and negating the contentions of the appellant that the exemption is given for virgin pig iron and if pig iron was used and thereafter reduced to scrap, there could be no exemption in respect of that scrap being different from pig iron and consequential refund of the duty-paid on pig iron, the Court.

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HELD: (1) The only question is whether duty-paid pig iron is used along with non-duty-paid materials. Pig iron is made out of iron ore plus limestone plus coke. Pig iron is melted and processed into ingot moulds and bottom stools. Nothing is added to pig iron. When ingot moulds and bottom stools become unserviceable they are broken. This becomes scrap and is melted and used in the manufacture of steel ingots. All the time it is duty-paid pig iron which is processed into ingot moulds and bottom stools and again broken into scrap and melted in the making of steel ingots. [1048 E-F]

H

(2) There cannot be double taxation on the same article. The analogy of the Revenue of the example of excise duty on motor cars, in spite of the fact that there was duty on tyres and duty on metal sheets was misplaced. [1048 G]

(3) Notification No. 30/60 granting exemption to duty-paid pig iron does not say that exemption is granted only when duty-paid pig iron is used and that

the exemption would not be available if duty-paid pig iron is mixed with other non-duty-paid materials. [1048 H, 1049 A]

(4) The object of the Notification was to grant relief by exempting duty-paid pig iron. If the intention of the Government were to exclude the exemption to duty-paid pig iron when mixed with other materials, then the Notification would have used the expression "only" or "exclusively" or "entirely" in regard to duty-paid pig iron. [1049 A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 723-737 of 1971.

From the Judgment and Order dated 18-4-1969 of the High Court of Judicature at Patna in Civil Writ Jurisdiction Case nos. 614 to 626 of 1967.

*Shyamla Pappu, Girish Chandra and S. P. Nayar* for the Appellants.

*G. S. Pathak, J. B. Dadachanji, O. C. Mathur, R. Narain and A. K. Verma (Mrs.)* for the Respondent.

The Judgment of the Court was delivered by

RAY, C.J. These appeals are by certificate from the judgment dated 18 April, 1969 of the High Court of Patna.

The High Court quashed the orders of the Revenue Authorities dated 7 July, 1967.

The appellants claimed before the Revenue Authority exemption from the payment of duty in respect of duty paid pig iron which was used in the making of steel ingots.

The respondent manufactures iron and steel products. The respondent manufactures ingot moulds and bottom stools from pig iron for use in steel melting shops. The respondent pays Central excise duty on such ingot moulds and bottoms stools in accordance with the provisions contained in section 3 of the Central Excises and Salt Act, 1944 hereinafter referred to as the Act.

Section 3 of the Act is the charging section. Section 3 states that there shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured at the rates set forth in the First Schedule.

Prior to the Finance Act 1964 Items No. 25 and 26 in the First Schedule to the Act mentioned pig iron and steel ingot respectively as the description of goods subject to excise duty.

As a result of the Finance Act, 1964 Items No. 25 and 26 were substituted by the following :—

**A** The respondent's case before the Revenue Authorised and also in the High Court in short was this : When ingot moulds and bottom stools become unfit for further use these are scrapped into pieces and remelted in the respondent's steel melting shops in an admixture with other non duty paid scraps and hot metal in the manufacture of steel ingots. The respondent claimed a set off of duty to the extent of duty paid on pig iron being the remelted scrap used in the manufacture of steel ingots.

**B** The respondent based the claim for exemption on Notification No. 30/60 dated 1 March, 1960 issued by the Central Government in terms of Rule 8(1) of the Central Excise Rules, 1944 (hereinafter called the Rules) exempting steel ingots in which duty paid pig iron is used from so much of the duty leviable thereon as is in excess of Rs. 30/- per ton. By notification No. 120 of 1960 dated 1 October, 1960 Notification No. 30/60 was amended by substituting the figures and words "Rs. 29.35 per metric ton" for the words "Rs. 30 per ton".

**C** By Notification No. 75/62 dated 24 April, 1962 the Central Government in exercise of powers conferred by Rule 8(1) of the Rules exempted steel ingots falling under Item 26 of the First Schedule to the Act and specified in Column 2 of the table appended to the notification from so much of the duty of excise leviable thereon as is in excess of duty specified in the corresponding entry in Column 2 of the said table. In column 2 of the said notification the following descriptions and duty appear :

<b>E</b> Sl. No.	Descriptions	Duty
1.	If produced out of scrap obtained from duty paid pig iron	Rs. 30 per M. T.
<b>F</b> 2.	If produced out of old iron or steel scrap or scrap obtained from duty paid steel ingots or products (75/62)	Nil.

**G** The rates given in these aforesaid notifications were further amended by Notification No. 22 of 1964 issued on 1 March, 1964. The rates in respect of Notification No. 30/60 dated 1 March, 1960 for the words and figures "Rs. 20.35 per metric ton" the words and figures substituted were "Rs. 20/- per ton".

**H** Duty was realised from the respondent on steel ingots in the making of which duty paid pig iron of rejected ingot moulds and bottom stools was used along with non-duty paid materials. The respondent claimed exemption in respect of duty paid pig iron on rejected moulds and bottom stools used in the making of steel ingots. The claim of the respondent for exemption in respect of duty paid pig iron was rejected by the Assistant Collector of Central excise by his order dated 29 August, 1965.

The respondent filed appeals before the Collector of Central Excise who by order dated 30 July, 1965 dismissed the respondent's appeals. A

The respondent thereafter filed a revision petition before the Ministry of Finance under section 36 of the Act. The Government by an order dated 7 July, 1967 rejected the revision petition of the respondent. The Government held that the respondent was not entitled to any exemption under Notification No. 30/60 dated 1 March, 1960 because remelted scrap obtained from unserviceable casting moulds, viz., ingot moulds and bottom stools was used in conjunction with other non duty paid pig iron in the manufacture of steel ingots. B

The respondent challenged the orders in the High Court. The High Court quashed the orders of the Revenue Authorities. The High Court held that the Revenue Authorities fell into the error of interpreting Notification No. 30/60 by confining exemption to steel ingots in which "entirely, exclusively or only" duty paid pig iron is used. The High Court held that the words "entirely, exclusively or only" were not used in the notification. The notification exempted steel ingot in which duty paid pig iron was used. The High Court also held that the notification would have to be interpreted in a manner that the statute would not cast a burden twice over for payment of tax on the tax payer unless the language of the statute is so compellingly certain to that effect. C D

The appellant contended that exemption is given for virgin pig iron and if pig iron was used and thereafter reduced to scrap there could be no exemption in respect of scrap. It was also said on behalf of the appellant that scrap iron was different from pig iron, and, therefore, the refund of the duty paid on pig iron would not arise. E

The appellant Government relied on Notification No. 75/62 dated 25 April, 1962 which gave exemption to steel ingots from so much of the duty of excise leviable thereon if produced out of scrap obtained from duty paid pig iron or if produced out of old iron or steel scrap or scrap obtained from duty paid steel ingots or products. The appellant Government relied on Notification No. 75/62 dated 25 April, 1962 for two reasons. First, it was said that the exemption in Notification No. 30/60 dated 1 March, 1960 exempting steel ingot in which duty pig iron is used will not exempt scrap iron which is different from pig iron. Second, Notification No. 75/62 dated 25 April, 1962 gave exemption to scrap iron in certain cases and when Notification No. 75/62 was rescinded in 1964 no exemption could thereafter be claimed in respect of scrap. F G

The respondent contended that the appellant all throughout before the Revenue Authorities and the High Court knew and treated the case of the respondent to be a claim for exemption of duty paid pig iron in the manufacture of steel ingots. In paragraphs 5, 6 and 7 of the statement of case of the appellant it is said that the respondent claimed refund of the duty paid on pig iron used in ingot moulds and bottom H

**A** stools being the melted scrap in the manufacture of steel ingots. In the revision order of the Revenue dated 7 July, 1967 in paragraphs 4 and 6 it is stated that the claim of the respondent was for duty paid material used in the making of steel ingots. The Revenue Authorities in the said order did not accept the claim of the respondent for exemption on the ground that duty paid pig iron was mixed with non duty paid pig iron.

**B** In paragraph 9 of the affidavit of the Revenue used in the High Court the Revenue said that the various scraps mixed included duty paid and non duty paid scraps. The Revenue referred to rejected ingot moulds and bottom stools as scrap.

**C** The respondent in the affidavit in reply in the High Court stated that the "question for consideration in these writ applications is the rate of duty leviable on steel ingots produced from processed moulds and bottom plates which have already borne a duty". The respondent also stated that the processed mould and bottom plates used in the manufacture of steel ingots are recorded.

**D** The respondent contended that it was never the case of the Revenue that it was scrap in respect of which the respondent wanted exemption. Counsel for the respondent rightly submitted that if the Revenue made that case the respondent would have produced not only affidavit evidence but also evidence of experts to determine the question of fact whether the article, viz., melted ingot mould and bottom stools altered the character of duty paid pig iron.

**E** Counsel for the respondent is right in the contention that the only question here is whether duty paid pig iron is used along with non duty paid materials. There is no dispute that there are materials and data to find out the quantity of duty paid pig iron used. Pig iron is made out of iron ore plus limestone plus coke. Pig iron is melted and processed into ingot moulds and bottom stools. Nothing is added to pig iron.

**F** When ingot moulds and bottom stools become unserviceable they are broken. This becomes scrap and is melted and used in the manufacture of steel ingots. The respondent rightly contends that all the time it is duty paid pig iron which is processed into ingot moulds and bottom stools and again broken into scrap and melted in the making of steel ingots.

**G** The High Court rightly held that the contention of the Revenue fails on two broad grounds. First, there cannot be double taxation on the same article. Counsel for the Revenue gave the example of excise duty on motor cars, in spite of the fact that there was duty on tyres and duty on metal sheets. The analogy is misplaced. In such cases the duty is on the end product of motor cars as a whole. The duty on tyres and the duty on metal sheets do not enter the area of duty on motor car. Second, Notification No. 30/60 grants exemption to duty paid pig iron. The High Court rightly said that the Notification does not say that exemption is granted only when duty paid pig

**H**

iron is used and that the exemption would not be available if duty paid pig iron is mixed with other non duty paid materials. If the intention of the Government were to exclude the exemption to duty paid pig iron when mixed with other materials then the notification would have used the expression "only" or "exclusively" or "entirely" in regard to duty paid pig iron. The object of the notification was to grant relief by exempting duty paid pig iron.

For these reasons, the judgment of the High Court is affirmed and the appeals are dismissed. Parties will pay and bear their own costs.

S.R.

*Appeals dismissed.*