

CHHEDA INDUSTRIES  
v.  
COLLECTOR OF CUSTOMS, MADRAS

MARCH 25, 1997

[S.C. SEN AND SUJATA V. MANOHAR, JJ.]

*Custom Tariff Act, 1975 :*

*Tariff Heading—73.15(1) or 73.15(2) (prior to 1.1.1981)—"Stainless steel circles"—Classification of—Held : Classifiable under Tariff Heading 73.15(1) and not under Tariff Heading 73.15(2)—These were not covered by the term "sheet" occurring in Note 1(n) to Ch. 73 and Tariff Heading 73.13.*

*Refund of duty—Claim—Procedure for—Held : To be processed in accordance with the ratio of Mafatlal Industries' case.*

*Interpretation of Statutes :*

*Taxing Statutes—Interpretation of—Held : Benefit of doubt relating to interpretation must go to the taxpayer.*

*Words and Phrases :*

*"Sheet"—Meaning of—In the context of—Note 1 (n) to Chapter 73 of the Customs Tariff Act, 1975.*

**The appellants imported stainless steel circles for which customs duty was levied under customs Tariff Heading 73.15(2). The appellants contended that the said stainless steel circles were classifiable under Tariff Entry 73.15(1). The Customs, Excise and Gold (Control) Appellate Tribunal rejected the appellant's contention. Hence this appeal.**

**On behalf of the respondent-Revenue it was contended that a circle is nothing but a "sheet" which was cut to a non-rectangular shape within the meaning of Note 1(n) to Chapter 73 of the Customs Tariff Act, 1975; the same would, therefore, be covered by Heading 73.13. and that in sub-heading 73.15(2) "sheet" would also cover a circle.**

**Allowing the appeal, this Court**

A HELD : 1.1. A sheet is basically a very thin and broad piece of any substance normally of a regular shape. Hence, Note 1(n) to Chapter 73 of the Customs Tariff Act, 1975 expressly includes a sheet cut into a non-rectangular shape. A stainless steel circle has a distinct shape and form of its own quite different from a sheet. [347-H]

B *Webster's Comprehensive Dictionary*, referred to.

C 1.2. Since forms, which are not specifically set out in Tariff Heading 73.15(2), will have to be classified under 73.15(1), circles of stainless steel will have to be classified under Heading 73.15(1). Note 1(n) does not provide much assistance in this connection. In respect of Heading 73.13, which deals with sheets and plates, the Note says that sheets or plates, which have been cut to non-rectangular shapes, will also be classified as sheets, or plates. But when stainless steel is in the form of a circle, it assumes a specific form and it cannot be treated if merely as a stainless steel sheet, which has been cut to a non-rectangular shape. It has a specific form of its own. [348-E-F]

E 1.3. The Customs Tariff Amendment Act of 1982 whereby angle, shapes, sections and circles of stainless steel are added to Tariff Heading 73.15(2) is given retrospective effect from 1.1.1981. Therefore, prior to 1.1.1981 angles, shapes, sections and circles of stainless steel were not covered under Sub-heading (2) of Heading 73.15. It is a well-established principle of interpretation of taxing statutes that the benefit of any doubt relating to interpretation must go to the taxpayer. [349-A-B]

F *Venkateshwara Stainless Steel & Wire Industries v. Union of India*, (1991) 53 ELT 312 (Mad.), approved.

*Super Traders & Anr. v. Union of India*, (1983) ELT 258 (Del.), overruled.

G 2. Refund applications by the assesseees have to be processed in accordance with the ratio of *Mafatlal Industries* case. [349-G]

*Mafatlal Industries Ltd. v. Union of India*, (1996) 9 SCALE 457, referred to.

H CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1744-45 of 1988 Etc.

From the Judgment and Order dated 23.12.86 of the Customs Excise and Gold. (Control) Appellate Tribunal, New Delhi in A. No. 896 and 1100 of 1981-B2 (Order No. 1344-45 of 1986-B2) A

N.D. Garg for the Appellant.

N.K. Bajaj, S.A. Matto, V.K. Verma and P. Parmeswaran for the Respondents. B

The Judgment of the Court was delivered by

**MRS. SUJATA V. MANOHAR, J.** The appellants in Civil Appeal Nos. 1744-45 of 1988 are importers of stainless steel circles. The appellants have filed the present appeals against an order of the Customs, Excise, and Gold (Control) Appellate Tribunal holding that stainless steel circles imported by the appellants are classifiable under Customs Tariff Entry 73.15(2) instead under Tariff Entry 73.15(1) as contended by the importers. The appellants in Civil Appeal No. 10334-36 of 1995 are Union of India. They have challenged a decision of the Madras High Court holding that the stainless steel circles imported by the respondents therein are classifiable under Customs Tariff Entry 73.15(1) and not under Customs Tariff Entry 73.15(2) as contended by the appellants therein. The Madras High Court has followed an earlier decision of the Division Bench of that court in *Venkateshwara Stainless Steel & Wire Industries v. Union of India*, (1991) 53 E.L.T. 312 (Mad.) in so holding. C  
D  
E

All these appeals raise a common question regarding the classification of stainless steel circles imported by the assessees. For the sake of convenience, we are referring to the facts in Civil Appeal Nos. 1744-45 of 1988. F

In or about October 1980 the appellants imported stainless steel circles. The Customs authorities levied and collected duty on stainless steel circles so imported under Customs Tariff Heading 73.15(2). The standard duty of customs under that Heading was 300% which was reduced by notification dated 15.7.1977 and the effective duty was 220% which was levied and collected. The importers contended that the correct classification of the goods so imported was under Customs Tariff Heading 73.15(1) and the rate of duty was 60% which, by reason of the notification dated 18.6.1978, was reduced to 35%. The appellant has lost in the departmental H

A proceedings and hence the present appeals.

The relevant Tariff Entry, at the material time, was as follows :

B	Head- ing No.	Sub-heading No. & description of articles.	Rate of standard	duty UK	Other prefer ential areas.	Duration when rate of duty are protected.
C	73.15.	Alloy steel and high carbon steel in the forms mentioned in heading Nos. 73.06/07 to 73.14				
D		(1) Not elsewhere specified.	60%	.....	.....	.....
E		(2) Coils for re-rolling, bars (including bright bars), rods, wire rods, strips, sheets and plates of stainless steel.	300%	.....	.....	.....

Entry 73.15 sets out that it will cover, *inter alia*, stainless steel in the forms mentioned in Heading Nos. 73.06/07 to 73.14. These earlier Headings 73.06/07 to 73.14 deal with iron and steel products. The forms of iron and steel items which are mentioned in these entries, *inter alia*, are puddled bars, pilings, ingots, block, lumps, coils for re-rolling, bars and rods, angles, shapes and sections, hoops and strips, sheets and plates and so on. Heading 73.13 deals with sheets and plates of iron or steel, hot-rolled or cold-rolled. It is divided into two parts : (1) Not elsewhere specified and (2) Tinned sheets and plates. Circles are not expressly mentioned in any of these entries. Entry 73.15 which deals, *inter alia*, with stainless steel, is also divided two parts : (1) Not elsewhere specified and (2) Coils for re-rolling, bars, rods, wire rods, strips, sheets and plates of stainless steel. Sub-heading (2) clearly refers to certain specific forms of stainless steel which are mentioned therein, namely, coils, bars, rods, wire rods, strips, sheets and plates. Forms which are not expressly dealt with in the second Sub-heading will fall under the first Sub-heading which is in the nature of a residuary

Sub-heading covering all types and forms of stainless steel material which does not fall under Sub-heading (2). A

It is the contention of the department that sheets which are expressly covered by Sub-heading (2) of Heading 73.15 would cover circles. Therefore, circles will not fall in the residuary Sub-heading (1) of Heading 73.15. The department relies upon Note 1(n) of the Chapter Note of Chapter 73 dealing with iron and steel and articles thereof. Entry 73.15 forms a part of this chapter. Note 1(n) which relates to sheets and plates in an earlier Heading 73.13, is as follows : B

"(n) : 'sheets and plates' (Heading No. 73.13) : C

rolled products (other than coils for re-rolling as defined in paragraph (k) above) of any thickness and, if in rectangles, of a width exceeding 500 millimetres.

Heading No. 73.13 is to be taken to apply, *inter alia*, to sheets or plates which have been cut to non-rectangular shape, perforated, corrugated, channelled, ribbed, polished or coated, provided that they do not thereby assume the character of articles or of products falling within other Headings;" D

The second part of Note 1(n) states that Heading 73.13 will apply, *inter alia*, to sheets or plates which have been cut to non-rectangular shapes. The department, therefore, contends that a circle is nothing but a sheet which is cut to a non-rectangular shape. It will, therefore, be covered by the term "sheet". Hence in Heading 73.15 also "sheet" in Sub-heading 73.15(2) will cover a circles. E F

Webster's Comprehensive Dictionary defines a "sheet" as : (1) a very thin and broad piece of any substances; that which is or can be spread, as upon a surface, or can be laid in broad folds; anything having a considerable expanse with very little thickness, (2) A large rectangular piece of linen or cotton cloth, used in making up a bad. (3) A piece of paper, especially one of a regular size; hence, a newspaper, or a leaf of a book. (4) A piece of metal or other substance hammered, rolled, fused or cut very thin : a sheet of glass. (5) A broad flat surface; superficial expanse : a sheet of water, a sheet of flame etc. A sheet, therefore, is basically a very thin and broad piece of any substance normally of a regular shape. Hence H

- A Note 1(n) expressly includes a sheet *cut* into a non-rectangular shape. A stainless steel circle has a distinct shape and form of its own quite different from a sheet. In the case of *Venkateshwara Stainless Steel & Wire Industries* case (supra), after referring to the Indian Standard Specifications for stainless steel sheets, coils and circles for utensils and hospital ware, the
- B Madras High Court has pointed out that in commercial parlance stainless steel circles are a commodity distinct from stainless steel sheets. Their pricing is also on a different basis (diameter length). The High Court has also referred to atleast two notifications under the Central Excise Tariff where a distinction is made between sheets and circles. The first notification is in respect of partial exemption to plates., *sheets, circles*, strips and
- C foils produced from old or duty paid scrap. While the second notification is in respect of aluminium. It grants exemption to aluminium manufactures containing more than 97% of aluminium. The notification refers to plates, *sheets, circles*, strips and foils. Of course these are notifications under a completely different tariff. We are referring to them only for the purpose
- D of showing that sheets and circles have been considered as two different forms in which a metal can be manufactured of sold.

Since forms which are not specifically set out in Tariff Heading 73.15(2) will have to be classified under 73.15(1), circles of stainless steel will have to be classified under Heading 73.15(1). Not 1(n) does not

E provide much assistance in this connection. In respect of Heading 73.13 which deals with sheets and plates, the note says that sheets or plates which have been out to non-rectangular shapes will also be classified as sheets or plates. But when stainless steel is in the form of a circle, it assumes a

F specific form and it cannot be treated merely as a stainless steel sheet which has been cut to a non-rectangular shape. It has a specific form or its own.

Tariff Heading 73.15 has been subsequently amended by the Customs Tariff Amendment Act of 1982 by which Tariff Entry 73.15(2) has been

G amended to include circles, angles, sheets and sections in addition to sheets and plates of stainless steel. The Statement of objects and Reasons sets out, "Stainless steel articles not elsewhere specified other than those falling under Sub-heading (2) fall Sub-heading (1) of Heading 73.15..... The difference in duty the two Sub-headings is so large that attempts have been

H made by some importers to manipulate the description or form of the articles in such a ways as to claim a lower rate of duty as has recently

happened in the case of stainless steel sheets imported in the guise of folded angles and circles....." The amendment whereby angles, shapes, section and circles of stainless steel are added to Tariff heading 73.15(2) is given retrospective effect from 1st of January, 1981. Therefore, prior to 1st of January, 1981 angles, sections and circles of stainless steel were not covered under Sub-heading (2) of Heading 73.15. They have been so included with effect from 1.1.1981. It is a well-established principle of interpretation of taxing statutes that the benefit of any doubt relating to interpretation must go to the tax-payer.

The contention of the department that prior to the amendment, sheet included angles, shapes, sections or circles is difficult to accept for reasons we have set out. We are, therefore, inclined to agree with the view taken by the Madras High Court in *Venkateshwara Stainless Steel & Wire Industries's* case (supra). The Delhi High Court has, however, in the case of *Super Traders and Anr. v. Union of India and Ors.*, (1983) E.L.T. 258 (Del.) taken a contrary view holding that stainless steel circles are nothing but stainless steel sheets and are classifiable under Heading 73.15(2). It has relied upon Chapter Note 1(n) and has held that stainless steel circles are stainless steel cut to non-rectangular shape. In our view, this is not a correct reading of Note 1(n). A circle is a very specific form in which stainless steel is marketed. It cannot be treated as a sheet cut to a non-rectangular shape. Its pricing is also different from that of a sheet. It has a separate form and a commercial identity of its own. It would, therefore, not be covered by the term 'sheet' in Tariff heading 73.15(2) prior to 1.1.1981.

All these appeals deal with Tariff Entry 73.15 as it stood prior to its amendment with effect from 1.1.1981. Therefore, stainless steel circles imported by the importers in all these appeals are classifiable under Tariff Heading 73.15(1) and not under Tariff Heading 73.15(2).

Civil Appeal Nos. 1744-45 of 1988 ar, therefore, allowed while Civil Appeal Nos. 10334-10336 of 1995 are dismissed. Refund applications by the assesseees will have to be processed in accordance with the ratio of the judgment of this Court is *Mafatlal Industries Ltd. v. Union of India*, (1996) 9 SCALE 457. There will, however, be no order as to costs.

V.S.S.

Appeal allowed.

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