

## ALUMINIUM CORPORATION OF INDIA LTD.

v.

UNION OF INDIA &amp; ORS.

August 22, 1975

[H. R. KHANNA, V. R. KRISHNA IYER, A. C. GUPTA AND  
S. MURTAZA FAZAL ALI, JJ.]

*Central Excise Rules, 1944—Rule 8(1)—Finance Act, 1960—Excise duty on Aluminium—Item 27—Notification of Govt. of India dated 1st March, 1960—Exemption for use of excise paid aluminium.*

The appellant manufactures aluminium plates, sheets, circles, strips and foils which are the end products of its composite factory, but, as intermediate products, it also turns out ingots, bars, slabs, billets, pellets and the like which get consumed mostly in the process of manufacture of plates, sheets, and other end products. Aluminium is first converted into items like ingots, bars, slabs, etc., but when they are used up for finished products like plates and sheets, nearly half of the stuff is thrown back into scrap in which state it is remelted and starts its manufacturing journey over again. Under the Finance Act for the year 1960, Excise Duty was imposed on the aluminium. On the manufacturing of the aluminium, plates, sheets, circles, strips and foils in any form or size, the duty leviable was rupees five hundred per metric tonne. A note appended to Item 27 reads as under :

“Under the Government of India, Ministry of Finance, (Department of Revenue) Notification No. 29/60 Central Excises, dated the 1st March 1960, the following aluminium manufactures, namely plates, sheets, circles, strips and foils in any form is used, are exempt from so much of the duty leviable thereon as is in excess of Rs. 200.00 per metric tonne.”

The appellant manufactured certain plates, sheets etc. by using partly duty paid aluminium and partly aluminium on which no duty was paid. The authorities under the Act disallowed exemption under note to Item 27 on the ground that the plates, sheets, etc., were not manufactured exclusively out of the duty paid aluminium.

Allowing the appeal,

HELD : (1) The whole scheme of the exemption is that where ingots, bars, blocks, slabs, billets, pellets etc. made out of aluminium scrap or scrap obtained from the virgin metal on which excise duty was already paid, are used for making finished items like sheets, reduction *pro tanto* in the rate of duty leviable on the final product is to be given. [403BC]

(2) The marginal mystique in interpretation has arisen from misunderstanding the spirit letters of the notification. [405-D]

(3) We feel confident that the State will seriously consider : (a) that good government involves not only diligent collection of taxes, but also ready refunds of excess levies; (b) that simplicity or easy comprehensibility in drafting legislation, including rules and notifications affecting the laity, is an art found absent, although not difficult to accomplish, given a fresh approach to use of statutory language; and (c) that a fair construction—not always one adverse to the assessee—is permissible and proper on the part of government and the taxing officers when enforcing fiscal legislation. [401DE]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 677 of 1968

Appeal by special leave from the judgment and order dated the 21st August, 1967 of the Govt. of India, Central Excise in No. 1036 of 1967.

- A *A. K. Sen, Anjana Sen and Rameshwar Nath*, for the appellant.  
*G. L. Sanghi and S. P. Nayar*, for the respondents.

The Judgment of the Court was delivered by

- B KRISHNA IYER, J.—The fate of this appeal, by special leave, turns on the construction of a notification issued by the Government of India dated April 20, 1960 under r. 8(1) of the Central Excise Rules, 1944 whereby a qualified exemption was accorded to certain types of aluminium manufactures in the matter of excise duty. The ultimate statutory revision to the Central Government having been decided against the appellant company, it has challenged the correctness of the view based on which the revision petition was dismissed.

- C The facts, fortunately, are few and beyond controversy although the length of the litigation has been considerable and beyond necessity, this being the second time the appellant has had to come to this Court aggrieved by the revisory authority's refusal to grant refund of overlevied excise duty, as claimed by it. Had there been disputes on facts, we would have hesitated to reassess the findings but as the record stands, the sole question is one of construction.

- D If we may anticipate our ultimate conclusion even at the opening stage, this appeal deserves to be allowed as a matter of law, but what is more significant for society are three unhappy features which, we feel confident, the State will seriously consider. They are : (a) that good government involves not only diligent collection of taxes, but also ready refunds of excess levies; (b) that simplicity or easy comprehensibility in drafting legislation, including rules and notifications affecting the laity, is an art found absent, although not difficult to accomplish, given a fresh approach to use of statutory language; and (c) that a fair construction—not always one adverse to the assessee—is permissible and proper on the part of government and the taxing officers when enforcing fiscal legislation.

- F The appellant manufactures aluminium plates, sheets, circles strips and foils which are the end products of its composite factory, but, as intermediate products, it also turns out ingots, bars, slabs, billets, pellets and the like which get consumed mostly in the process of manufacture of plates, sheets, and other end products and rarely by way of sales of clubs as such. The raw material, i.e., aluminium, is extracted by the company from bauxite from which ingots, slabs and the like are made which, in turn, are rolled into sheets, circles etc., for sale.
- G It is one of the admitted features of this manufacturing process that about 50% of the ingots, slabs and billets used for further manufacture of plates, sheets circles etc. become scrap and are melted, to be put back along with raw scrap for the purpose of recycling. In short, aluminium is first converted into items like ingots, bars, slabs etc., but when they are used up for finished products like plates and sheets, nearly half of the stuff is thrown back into scrap in which state it is remelted and starts its manufacturing journey over again.

- H We have now indicated how there are really two stages in the course of turn-out of the finished goods. Excise duty came to be imposed

from March 1, 1960 on aluminium under the Finance Act for that year (we are not concerned with the same duty on the same commodity imposed in prior years). Item no. 27 which relates to aluminium, reads:

Description of goods	Rate of Duty
Aluminium	
(a) In any crude form including ingots, bars, blocks, slabs, billets, shots & pellets	Three hundred rupees per metric tonne
(b) Manufactures, the following, namely, plates, sheets, circles, strips, and foils in any form or size	Five hundred rupees per metric tonne

A note appended to the entry is of significance and states :

“Under the Government of India, Ministry of Finance (Department of Revenue) Notification No. 29/60 Central Excises, dated the 1st March 1960, the following aluminium manufactures, namely plates, sheets, circles, strips and foils in any form or size in the manufacture of which duty paid aluminium in any form is used, are exempt from so much of the duty leviable thereon as is in excess of Rs. 200.00 per metric tonne”

From March 1, 1960 to April 24, 1960 this two-tier system of levy at differential rates prevailed, it being note-worthy that the manufacturer of plates, sheets, and other finished products had to pay only at an overall rate of Rs. 500/- per metric tonne. Moreover, he was also entitled to a proportionate exemption, in the event of using aluminium in any form already dutied, ‘from so much of the duty leviable thereon as is in excess of Rs. 200.00 per metric tonne’.

There was avoidable complication experienced in the enforcement of the two-tier system of duty and on the representation of the concerned composite manufacturers, the Government of India switched over to a single point levy at the ultimate stage of the manufacture and in that behalf, issued an exemption notification on the meaning of which the parties have joined issue before us. This notification reads thus :

“The Central Government exempts the following aluminium manufactures, namely, plates, sheets, circles, strips, and foils in any form or size, in the manufacture of which aluminium in any crude form including ingots, bars, blocks, slabs, billets, shots and pellets made out of old aluminium scrap or scrap obtained from the virgin metal on which the appropriate excise duty has been paid from so much of the duty leviable thereon as is in excess of Rs. 200.00 per metric tonne.”

(Notification No. 66/60 dated 20-4-1960) Notwithstanding the stilted style of the notification, it is, to our mind, clear that what the Central Government intended and effected by this notification was to

A fix the rate of levy at Rs. 500/- for the fully manufactured aluminium products, thus making up for the levy at the rate of Rs. 300/- at an intermediate stage. But these composite mills which made both half-manufactured and fully manufactured items had to be granted an exemption in cases where the half-manufactured items went into further stages of manufacture *after they had suffered duty*. The whole scheme of  
 B the exemption, as we see it, is that where ingots, bars, blocks slabs, billets, shots and pellets made out of aluminium scrap *or scrap* obtained from the virgin metal on *which excise duty has already been paid*, are used for making finished items like sheets, there should be a reduction *pro tanto* in the rate of duty leviable on the final product. Thereby  
 C the manufacturer would have paid Rs. 300/- for the items at the intermediate stage of manufacture and if such items were used up in the later stages of manufacturing finished goods, he would get concession to that extent by being charged Rs. 200/- per metric tonne.

We have earlier pointed out that one of the features of the manufacturing process is that when ingots, bars and the like are used for manufacturing plates, sheets, circles etc., nearly 50% of the former become scrap and have to be melted and recycled over again. Taking  
 D note of the fact that this 50% deteriorates into scrap, although it has suffered duty as ingot, bar or block, the exemption notification included *scrap metal* which has suffered tax as qualifying for the concessional rate of Rs. 200/- when it eventually went into the manufacture of the final products viz., plates, sheets, circles, etc. Once we understand this commonsense view, which fits in with fairness and law as expressed in the language of the notification, the resolution of the conflicting  
 E contentions becomes easy, since, on the facts, there is no dispute.

We will now proceed to a statement of the relevant circumstances which invited the application of the exemption notification. The official materials before us establish beyond doubt—and so no serious difference between the parties is discernible—that from March, 1, 1960 to April 24, 1960 aluminium slabs which had suffered duty on  
 F semi-finished manufacture was 649.5620 MT. From this quantity of slabs, sheets, strips and circles amounting to 283.2925 MT were manufactured, of which 188.7336 MT were cleared by payment of duty at the rate of Rs. 200/- per MT. 1.0490 MT of sheets and strips was eligible to be cleared free of duty being for purposes of electrolysis which was duty-free. By simple arithmetic worked out by the Collector of  
 G Central Excise and forwarded to the Central Government (Annexure E), the balance of stock of finished goods manufactured out of duty paid slabs as on April 25, 1960 was 93.5099 MT. This quantity was actually cleared on payment of duty at the rate of 500/- per MT. But having been made out of duty-paid slabs the exemption notification applied and only Rs. 200/- per MT was payable. Thus the excess collected i.e., Rs. 300/- per MT was refundable. So obvious. And yet it took an appeal to this Court (C.A. No. 635 of 1964) and a direction  
 H for reconsideration before the Central Government would reluctantly consent to refund as per order d/- 21-8-67. There is no surviving dispute on this matter.

Shri A. K. Sen, appearing for the appellant, contended that much more by way of excess exaction had been made whose return he claimed in this appeal. He relied on the figures furnished by the Collector of Central Excise in Annexure E to make good his case. For, according to that report, 'duty-paid slabs issued for Rolling Mill between March, 1, 1960 and April 24, 1960 . . . 649.5620 MT. Duty paid slabs in stock as on April 25, 1960 . . . 12.9830 MT. Duty paid slabs in form of scrap and under processing 353.2865 MT. This was natural, as the manufacture of sheets, circles etc., out of slabs involved degradation of about 50% into scrap which, of course, after sustaining slight losses, would go back into the re-cycling process of manufacture. Two important points need mention. The State has no case (in the order under attack) that any slabs which had suffered duty had been sold as slabs. The whole quantity had gone into manufacture of sheets, circles and what not. It is common case that from April 25, 1960 all the finished goods cleared by Excise officials had been subjected to Rs. 500/- per MT of duty.

The above facts make out, fool-proof fashion, that the entire 649 odd MT of slabs had been transformed into sheets and the like. If the latter had been cleared on payment of excise at Rs. 500/- per MT—and it is admitted to have been so done—it follows that the levy was excessive to the tune of Rs. 300/- per MT as the Notification granting exemption on April 20, 1960 had reduced the levy in such cases to Rs. 200/- per MT.

This almost inescapable conclusion was sought to be countered by Sri Sanghi in a strenuous but unsuccessful submission which had appealed to the Central Government in its order d/- 21-8-67. The reasoning, only to be stated to be rejected, urged was that only if the sheets, circles etc. had been manufactured wholly and solely out of duty-paid slabs could the exemption be enjoyed. This condition of eligibility for concessional rate of duty is beyond the notification altogether and perhaps beyond reason. True, the order of Government in revision, rejecting the refund claim states this as the solitary ground. We quote the relevant portion :

"As the wordings of the Notification would go to show, the concessional rate of Rs. 200/- per MT was applicable only to those Aluminium manufactures, which were made out of duty paid aluminium in any crude form; this would evidently not cover aluminium manufactures made *partly out of duty paid and partly out of non-duty paid crude.*"

(emphasis, ours)

We wonder where the author of this order discovers in the statutory notification the exclusion from exemption altogether manufactures 'partly out of duty paid and partly out of non-duty paid crude'. If 99% of *duty paid* 'crude' were used for manufacture of sheets etc., should the final product be exigible to tax at Rs. 500/- per MT? Would it not virtually mean that merely because a wee bit of non-duty paid 'crude' were mixed the party is penalised by payment at Rs. 800/- per

- A MT ? An odd and unreasonable result ! Shri Sanghi for the respondent rightly asked whether a manufacturer who used 1% duty paid and 99% non-duty paid slabs in producing sheets can get away within from liability for duty at the rate of Rs. 500/- ? No, not at all. Such an assessee will get the benefit of the concessional rate (shall we call it rebate?) only to the extent of the 1% and will be subject to full payment at Rs. 500/- for the rest. If the mathematical facts are undisputed,
- B the factual conclusion is irrefutable. Of course, had there been failure on the part of the assessee to keep the statutory stock registers or otherwise his figures were suspicious the Collector of Excise could and would, ordinarily without fear of judicial interference, work out how much of the raw material had borne duty already. Here the facts are free from dispute and the respondent does not even hint at the possibility of a
- C part of the gross mass of 649.5620 MT which had been already dutied at the slab stage (some of which had been shed but reverted to the scrap state in the inevitable process of manufacture and had been thrown, as fresh raw material, into the on-going cyclic movement of re-creation of final products) had been sold away at that intermediate level. On that footing, the appellant was entitled to *pro tanto* remission as explained above. Both sides are at one that after April 24, 1960 excise clearance of finished aluminium products was granted to the
- D appellant on the single point levy system at Rs. 500/- per MT.

The marginal mystique in interpretation has arisen from misunderstanding the spirit and letter of the notification where it reads, 'the virgin metal on which the appropriate Excise Duty has been paid from so much of the duty leviable thereon as is in excess of Rs. 200.00 per metric tonne.' There is no need to go down to the order of the Collector of Excise and examine his reasons because it is somewhat

E obscure and sheds no more light on the issue before us.

To return what has been taken wrongly is as much a duty and grace of government as to levy relentlessly and fully what is due. Default in either, not altogether unfamiliar, brings down the confidence of the community in the Administration. That a party should have been put

F to two expensive and elongated litigations to recover a relatively small sum is regrettable.

Assuming that the tax officers have an *alibi* of two interpretations of the given notification, the question is whether plainer use of language is an art beyond the draftsman's skills ? We think not. To liquidate

G obscurity in legislative language, by abandoning obsolescent vocabulary and style of expression is an overdue measure if we remember the Renton Committee's observations made for British consumers but applies *a fortiori* to our Republic :

"There is hardly any part of our national life or of our personal lives that is not affected by one statute or another. The affairs of local authorities, nationalised industries, public corporations and private commerce are regulated by legis-

H lation. The life of the ordinary citizen is affected by various provisions of the statute book from cradle to grave."

The rule of law is the cornerstone of democracy and how can there be a rule of law society if the members, the bulk of whom are too poor to buy legal services, cannot decode the legislator's law and therefore obey it? Incomprehensible law annoys the Administration and estranges the citizen at a time when quick justice and less sterile litigation are the desiderate. The command of the law can claim the allegiance of the lay only by simplicity in legislation.

The appeal, for reasons assigned earlier, is allowed with costs.

*Appeal allowed.*

P.H.P.