

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 1070 OF 2001

M/S. MOHAN STEELS LTD.
(s)

Appellant

VERSUS

COMMNR. OF CENTRAL EXCISE, KANPUR
(s)

Respondent

(With application for ex-parte stay and permission to place addl. documents on record and with office report)

Date: 07/11/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE DALVEER BHANDARI

For Appellant(s)

Mr. V.Lakshmikumaran, Adv.

Mr. Alok Yadav, Adv.for

Mr. M.P. Devanath, Adv.

For Respondent(s)

Mr. K.Radhakrishnan, Sr. Adv.

Mr. Mohit Chaudhary, Adv.for

Mr. B.K. Prasad, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The Appeal is allowed. No costs.

Court Master

Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1070 OF 2001

M/s. Mohan Steels Limited

Appellant(s)

Versus

Commissioner of Central Excise, Kanpur

Respondent (s)

O R D E R

This Appeal is directed against the Final order No. 1815/2000-B

dated 29.8.2000 passed by the Customs, Excise & Gold (Control) Appellate

Tribunal, New Delhi (for short 'the Tribunal') in Appeal No. E/1644/96-B

whereby the Tribunal while dismissing the appeal filed by the assessee has

affirmed the order passed by the authorities below.

The issue involved in this appeal is as to whether M/s Mohan

Steels Ltd., the appellant herein, is entitled to the exemption from payment

of excise duty in terms of Notification No. 202/88-CE dated May 20, 1988,

as amended by Notifications No. 218/88-CE dated 21.6.1988; No. 222/88-

CE dated 23.6.1988; No. 276/88-CE dated 4.11.1988; No. 66/89-CE dated

1.3.1989; No. 170/89-CE dated 16.8.1989; No.63/90-CE dated 20.3.1990

and No.63/91-CE dated 25.7.1991. Under this notification, the exemption is

available to wire rods & bars of iron and steel manufactured by the

appellant out of the old M.S.Scrap containing broken pieces of bars, angles, old machinery parts, old automobile parts, old oil engines etc.

The notification exempts goods of the description specified in column (3) of the Table annexed thereto and falling within Chapter 72, Chapter 73 or Heading No. 84.54 of Schedule to the Central Excise Tariff Act, 1985 (for short 'the Tariff Act') from the whole of the duty of excise leviable thereon which is specified in the said schedule, when the final products are made from any goods of description specified in the corresponding entry in column (2) of the said Table. There is a condition in the notification that the inputs are exempted from payment of excise duty provided they have suffered the duty under the said Act at one stage or the other. The only controversy which resulted in denial of benefit of the notification to the appellant from the original authority up to the stage of the Tribunal is that the inputs used by the appellant for manufacture of finished product, do not answer the description of the goods specified in column (2). The appellant is using old and used railway materials as inputs for manufacturing the final products, namely, wire rods & bars of iron and steel. The appellant, has, however maintained that the inputs used by it are nothing but old M.S.Scrap containing broken pieces of bars, angles, old machinery parts, old automobile parts, old oil engines etc. purchased by it from the kabadis who in turn has purchased in auction from the government departments. Explanation to the notification provides as under:

"Explanation--For the purposes of this notification, all stocks of inputs in the country, except such stocks as are clearly recognisable as

being non-duty paid shall be deemed to be the inputs on which duty has already been paid."

From the reading of the explanation it is clear that there would be presumption that all stocks of inputs to be duty paid except such stocks as are clearly recognisable as being non-duty paid. Revenue has failed to show that the inputs used by the appellant are clearly recognisable being non-duty paid. The initial presumption in favour of the appellant raised under the explanation has not been rebutted.

The point involved in the present case is also concluded by a judgment of this Court in Vivek Re-Rolling Mills vs. Collector of Central Excise reported in 2002 (146) ELT 496(SC) on a different reasoning. The notification involved in that case was the same as in the present case. The appellant therein also was claiming the exemption under the same notification. This Court while reversing the decision of the Tribunal held that the order passed by the Tribunal could not be sustained and accordingly set aside the order and granted the appellant the benefit of the exemption notification.

Accordingly, this appeal is accepted and the order of the Tribunal is set aside and it is held that the appellant is entitled to the benefit of the exemption notification. No costs.

.....J.
(ASHOK BHAN)

NEW DELHI;
NOVEMBER 07, 2006.

.....J.
(DALVEER BHANDARI)

