

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.1274 OF 2002

M/S. PRAKASH METAL WORKS

Appellant(s)

VERSUS

COLLECTOR OF CENTRAL EXCISE, AHMEDABAD

Respondent(s)

(With office report)

WITH CIVIL APPEAL NO.1386 OF 2002

(With appln. for permission to file additional documents)

(With office report)

Date : 21/08/2007 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H.KAPADIA

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Appellant (s) Mr. A.R. Madhav Rao, Adv.

Mr. Alok Yadav, Adv.

Mr. Tarun Jain, Adv.

Mr. Monish Panda, Adv.

Mr. M.P. Devnath, Adv.

Mr. V. Balachandran, Adv.

For Respondent (s) Mr. T.V. Ratnam, Adv.

Mr. B.K. Prasad, Adv.

UPON hearing counsel the Court made the following  
ORDER

The appeals are dismissed with no order as to costs, in terms of the signed  
order.

(N. Annapurna)

Court Master

(Signed order is placed on the file)

(Madhu Saxena)

Court Master

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1274 OF 2002

M/s. Prakash Metal Works

... Appellant(s)

Versus

Collector of Central Excise, Ahmdabad

... Respondent(s)

WITH

Civil Appeal No.1386 of 2002

ORDER

These civil appeals filed by the assessee are directed against the judgment and order dated

October 30, 2001 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, Mumbai, in

Appeal Nos.4614, 4615/94-Bom. and 4617/94.

The appellant is a registered partnership firm engaged in the business of manufacturing

and selling of aluminium articles. It has a factory in Ahmedabad. It is registered as SSI unit with the

Government of Gujarat. It is in the business of manufacturing aluminium plates, sheets, ingots and

strips, aluminium circles and aluminium waste and scrap.

We are concerned with the period April 1, 1988 to February 28, 1992. The show cause notice given to the appellant is dated March 24, 1993. It was issued on the following, amongst other

grounds, namely, clandestine removal, non-payment of duty on goods cleared during the material period, non-maintenance of statutory records and accounts, selling of pat scrap without payment of

duty and non-entitlement to the benefit of exemption under Notification No.175/86-CE for ingots.

On the main question of clandestine removal and non-maintenance of statutory records

and accounts, penalty of Rs.10 lakhs has been imposed on the assessee firm, Rs.2 lakhs is imposed as

penalty on the partner, since deceased, and Rs.1 Lakh is imposed as penalty on the supplier of raw-

material.

In the present case, the appellant has violated Rule 9 read with Rule 173Q of the Central

Excise Rules. The appellant has not maintained RG-1 register; it has not filed the classification list; it

has not maintained statutory records and accounts and, in the circumstances, penalty, has been rightly imposed. The statutory rules were not complied with and, as a result, the appellant was

rightly found guilty of clandestine removal of the goods without filing the classification list. We are

in agreement with the view expressed by the Tribunal, vide the impugned judgment, that the penalty was leviable on the appellant for clandestine removal of the goods in question. In fact, this

was the only point on which the Tribunal has focused its entire attention. Therefore, we uphold the

order of the Tribunal imposing the penalty as stated hereinabove. To this extent, the civil appeals

stand dismissed.

However, there are two contentions advanced on behalf of the appellant before us which

were also argued before the Tribunal.

In the present case, the Department has denied the benefit of SSI exemption of aluminium

ingots for the year 1990-91 on the ground that the aluminium circles cleared by the appellant during

the period 1989-90 as exempted goods, cannot be treated as exempted goods and consequently the total value of clearances exceeded the limit of Rs.2 crores during the earlier year (1989-90) and,

therefore, the appellant was not entitled to SSI exemption for the year 1990-91 in respect of ingots.

Under the exemption Notification No.175/86-CE concessional rate of duty was admissible provided

the value of clearances in the previous year did not exceed Rs.2 crores. This reasoning of the Department was challenged by the appellant before the Tribunal. According to the appellant, vide

clause 3 of the exemption Notification No.175/86-CE dated 1st March, 1986 a ceiling limit was imposed on the total value of clearances at Rs.2 crores for the preceding financial year. However, under the proviso to clause 3, clearances of goods with a brand name, was not to be taken into account in the computation of the ceiling limit of Rs.2 crores. Under Explanation II to clause 3 of

the said Notification also it was expressly provided that goods chargeable to nil rate of duty, shall

not be taken into account for computation of the ceiling limit of Rs.2 crores. Placing reliance on

proviso to clause 3 as also on Explanation II, the appellant contended before the Tribunal that they

were entitled to the benefit of the exemption Notification No.175/86-CE on the ground that in the

present case the goods cleared were affixed with a brand name and, therefore, the clearances for the

preceding year in respect of such goods, cannot be taken into account for determination of the

ceiling limit of Rs.2 crores. This contention has not been answered by the Tribunal.

There is one more contention raised by the appellant, namely, that pat scrap which fell on the ground and which had emerged in the course of manufacture of aluminium circles, cannot be said to have been manufactured and, therefore, no duty thereon was payable. This contention has also not been decided by the Tribunal.

On the last two points, namely, whether the appellant was entitled to exemption and whether pat scrap was excisable to excise duty - we do not wish to express any opinion. We leave it to the Tribunal to decide the said two points. Suffice it to say that we are upholding the impugned order of the Tribunal imposing penalties on the partner of the firm, on the partnership firm as well as on the supplier of raw-materials, however, we remit the matter to the Tribunal to decide the question as to whether the assessee was entitled to exemption under Notification No.175/86-CE as also the question as to whether pat scrap was excisable to excise duty under the Central Excise Act, 1944. In deciding the last two points the Tribunal shall ascertain whether there is record to indicate the volume and value of clearances. This last direction is given by us as the appellant has been found guilty of clandestine removal.

Subject to above, appeals filed by the assessee stand dismissed with no order as to costs.

.....  
.....J.

(S.H. KAPADIA)

.....J.  
(B. SUDERSHAN REDDY)

New Delhi;  
August 21, 2007.