

PETITIONER:
INDIAN METALS AND FERRO ALLOYS LTD. CUTTACK

Vs.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE, BHUBANESHWAR

DATE OF JUDGMENT 22/11/1990

BENCH:
RANGNATHAN, S.
BENCH:
RANGNATHAN, S.
RAMASWAMY, K.

CITATION:
1991 AIR 1028 1990 SCR Supl. (3) 329
1991 SCC Supl. (1) 125 JT 1990 (4) 763
1990 SCALE (2) 1109

ACT:

Central Excises and Salt Act, 1944--Section 3 and First Schedule Item Nos. 26AA and 68--Assessee--Manufacturer of pipes, tubes and poles of iron and steel--assessability to excise duty--Whether under Item 26AA or 68.

HEADNOTE:

The appellant is a manufacturer of pipes, tubes and poles made of iron and steel. Tariff Item No. 26AA was introduced w.e.f. 24.4.1962 in the First Schedule to the Central Excises and Salt Act, according to which, the appellant paid the excise duty. Thereafter the Government issued a notification dated 1.3.1963, whereby 'telegraph, telephone and electric lighting and transmission poles falling under Item 26AA' were exempted from payment of duty subject to certain conditions. The appellant having paid the duty earlier, applied for the refund on 10.5.1963 and sought permission to clear the goods without payment of duty. The Assistant Collector rejected the said request on the ground that conditions prescribed in the notification had not been

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before the Collector of Central Excise who held that the goods in question were eligible for the exemption contained in the notification. As a consequence thereof, the appellant paid no duty on the goods and cleared the goods from 1962 till 1975. On 1.3.1975, the Legislature introduced Tariff Item No. 68 in the First Schedule to the Act covering goods not elsewhere prescribed. Even thereafter the appellant filed classification lists showing the poles as falling under Item 26AA and those lists were duly approved and the appellant cleared its goods without paying duty till August 1982. Earlier on 8.12.1977, the Superintendent of Central Excise had taken a view that the transmission and lighting poles were classifiable not under Item 26AA but under Item 68. The appellant was accordingly asked to furnish a statement of the goods manufactured and sold earlier and to file a classified list. The appellant objected contending that the poles were covered by Tariff 26AA and it was entitled to exemption. The Revenue did not accept that contention whereupon the appellant filed a writ petition before the High Court challenging the communication dated 26.12.1977. The

appellant received a further letter on 6.11.1981 whereby it was required to pay duty under Item No. 68 in regard to goods 330

'swaged poles' also. The appellant challenged this letter also by means of a writ petition before the High Court. The High Court declined to interfere with the adjudication proceedings and dismissed the writ petitions by directing that the adjudication be made within three months. On 31.3.83 the Assistant Collector passed an order holding the goods classifiable under Item 68. The Appellate Collector affirmed the order of the Assistant Collector. Both parties preferred appeals before the Central Excise and Gold (Control) Appellate Tribunal. The Tribunal did not agree with the contention of the Appellant that the goods were dutiable under Tariff Item No. 26AA. It however gave certain directions restricting the levy of excise duty periodwise. Hence these appeals by the appellant under Section 35L of the Act. Allowing the appeals, this Court,

HELD: There is some difference in the description of the goods. While item 26AA covers only pipes and tubes, the goods manufactured by the assessee are called poles. It is also true that the poles have to be manufactured by applying certain processes of heating and forging to pipes or tubes. But all this does not so change the commercial character of the goods as to take them away from the scope of item No. 26AA. [336C-D]

The language of tariff item No. 26AA is very wide. It covers iron and steel products of the description set out in 73

Unless the department can establish that the goods in question can, by no conceivable process of reasoning, be brought under any of the specific items mentioned in the tariff, resort cannot be had to the residuary item. [339E]

The appellant's contention that the goods in question fall under Item 26AA is well founded and the Revenue was not justified in attempting to levy duty on the basis that the goods fall under Tariff Item No. 68. [334G-H]

Indian Aluminium Cables Ltd. v. Union, [1985] 3 SCC 284; Bharat Forge and Press Industries v. C.C.E., [1990] 1 SCC 532; Varghese v. I.T.O., [1982] 1 SCR 629; State of Tamil Nadu v. Mahi Traders, [1989] 1 SCR 445; C.C.E. v. Andhra Sugar Ltd., [1989] (Supp.) 1, SCC 144 and Collector of Central Excise v. Parle Exports P. Ltd., [1989] 1 SCC 345, referred to.

JUDGMENT: