

**BEFORE THE COMMISSIONER OF STATE TAXES AND EXCISE-
CUM-APPELLATE AUTHORITY,**

HIMACHAL PRADESH, SHIMLA-171009

Appeal No. 40/2015-16

Date of Institution: 10-06-2015

Date of Order: 23-03-2024

In the matter of: -

M/s Parwati Steel & Alloys,

Trilokpur Road Kala Amb, District Sirmour (HP)**Appellant**

Versus

Deputy Excise and Taxation Commissioner-cum-

Assessing Authority, Flying Squad, South Zone

Parwanoo, District Solan (HP).**Respondent**

Present: -

- 1) Shri Dikken Kumar, Learned Advocate, for the appellant.
- 2) Sh. Wishve Bhaskar, ACST&E, Legal Cell, for the respondent.

**APPEAL UNDER SECTION 45 (1) (B) OF THE HIMACHAL PRADESH
VALUE ADDED TAX ACT, 2005**

**(READ WITH SECTION 12 OF THE HP TAX ON ENTRY OF GOODS INTO
LOCAL AREA ACT, 2010 AND RULE 16 OF THE HP TAX ON ENTRY OF
GOODS INTO LOCAL AREA RULES, 2012)**

Order

1. The above matter has come up for consideration in view of the remanding back of the matter by the Hon'ble H.P. Tax Tribunal vide order dated 19-11-2015 to and to hear the same on merits. The concluding and relevant para of the order ibid is as under:

"4. It is clear that there is a dispute regarding classification of the goods being imported and the rate applicable. The condition of depositing of 25% of the additional liability as determined vide order dated 26-03-2015 and the Ld. Excise and Taxation Commissioner order dated 11-09-2015 are stayed and the case is remanded back to the Excise and Taxation Commissioner, H.P. to hear the case on merits without any conditional amount."

2. Accordingly, notices, for the disposal of the case on merits were issued to the parties concerned. Briefs facts in the case are that the staff led by the Excise and Taxation Officer, (Flying Squad) (South



Zone), Parwanoo, inspected the business premises of the appellant on dated 19-09-2014 and the DETC Flying Squad/South Zone, Parwanoo (Respondent), after hearing the appellant, passed an order dated 26-03-2015, under the Himachal Pradesh Tax on Entry of Goods into Local Area Act, 2010 (hereinafter referred to as "the Act") and created an additional demand of Rs.58.82 lakh as differential entry tax for the period September 2013 to March 2014, and, April 2014 to August 2014. The respondent above in his detailed order ibid has asserted that the appellant was paying entry tax @0.5% as per entry No. 9(b) on imported raw material **consisting of stainless steel scrap and ingots, and two per cent on mild steel scrap** as per entry No. 14 of Schedule-II appended to the Act instead of payable rate of two per cent on **stainless steel scrap and ingots** as well as has been prescribed under Entry No. 14 of the SCHEDULE-II above. The appellant, felt aggrieved, had preferred an appeal before this Forum. This forum, vide order dated 19-09-20215 had directed the appellant to deposit 25% of the additional demand as conditional amount before hearing the matter on merits. Felt aggrieved by this order of deposition of 25% of additional demand, the appellant filed an appeal before the Ld. HP Tax Tribunal. The Ld. Tribunal vide order dated 19-11-2015 was pleased to pass the above quoted directions; accordingly the present proceedings have been initiated in the case.

3. The main dispute, as per order of the Ld. Tax Tribunal, thus, to be decided and settled on merits, is regarding the rate of entry tax payable on **stainless steel scrap and ingots** imported by the appellant. The appellant is engaged in the manufacturing and job work of mild steel/stainless steel ingots etc. and procures stainless steel scrap and ingots as raw material from outside the state and normally transfers the finished goods outside the state. The appellant, as per provisions of the Act, is liable to pay entry tax as per charging section 3(3) of the Act ibid. The rate of entry tax payable has been given in Schedule-II of the Act ibid which at the



relevant time (AY 2013-14, 2014-15) provided the rate of tax as under:

S. No.	Description of Goods	Rate of Tax
9.	(a) Waste material and scraps of all types. (b) Non-Ferrous Metal & Alloys including scrap thereof.	2% 1/4%
14.	All Industrial Inputs, raw material and packing material including goods mentioned in this Schedule other than goods mentioned at entry No. 9-b, being brought from outside the State for consumption, sale or use in manufacturing including contract manufacturing, processing, conversion, job-work, assembling or for sale.	2%

4. Shri Dikken Kumar, Learned Advocate for the appellant relied on arguments given with the appeal. The relevant grounds of appeal are that the entire amount has been reflected in the returns and the tax has rightly been paid as per rate vide entry No. 9. (b) of the Schedule-II appended to the Act. No other argument was put forward on behalf of the appellant.
5. Shri Wishve Bhaskar, ACST&E, Legal Cell, on behalf of the respondent submitted that the respondent has passed a detailed and specific order qua why entry tax @2% is applicable on import of stainless steel scrap under entry No. 14 of the Schedule and for the detailed reasons given there in the impugned orders, the same may be upheld and the appeal be dismissed on merits.

FINDINGS:

6. I have gone through the case record in the appeal above along with argument and prayer submitted by the appellant. The impugned order passed by the respondent has been perused minutely. The relevant parts of the order, for reference purpose, are being reproduced hereunder:

*"2. The second contention of the dealer is that goods should be classified as per their popular meaning. **Stainless Steel is understood by all of us as Stainless Steel only and nothing else.** The popular meaning of this term is not intended to be changed by the department for charging higher rate of tax on it. The Ld. Counsel for the dealer has himself admitted that the item which is being disputed for charging higher rate of tax was Stainless Steel Scrap*



brought by the dealer from outside HP. Moreover dealer is engaged in manufacturing of SS Flats and therefore definitely quality, composition and technical knowledge of the product must be known to it. It was for dealer to ensure the nature of its product i.e. whether it is non-ferrous or ferrous it was the only criteria to pay the tax

3. Third contention of the dealer was that Stainless Steel was non-magnetic hence same was Non-Ferrous. This strange conclusion is drawn by the dealer to its own advantage on the basis of the fact that some varieties of Stainless Steel are truly non-magnetic. There are varieties of Stainless Steel, for example 400 series, which have magnetic properties while Stainless Steel of 300 series is definitely non-magnetic. It is not known as to why the word **MAGNETIC** is treated as synonyms of **FERROUS** while both have different connotations. **Magnetism** as per dictionary meaning the properties of attraction or repulsion possessed by certain Elements/Alloys/Metal etc. **Ferrous** on other hand indicates presence of iron in a Metal/Alloy etc.

Both these terms are therefore are not interrelated as such. There are many materials which despite not being ferrous are still magnetic. Cobalt, Nickel, Gadolinium and Anddysprosium also have strong magnetic properties but they aren't ferrous. Hence the contention of the dealer that Stainless Steel was not ferrous only because it did not have magnetic qualities is completely incorrect

Now, the only issue which remains to be decided is whether stainless Steel scrap is non-ferrous metal or a ferrous metal. Tax will be charged as per the rate given in entry no. 9(b) if the stainless steel scrap is covered under the category of "Non ferrous metal, and scrap thereof". It will be charged as per the rate specified in entry no 14 if stainless steel is covered under the category of ferrous metal. The meaning of these terms "ferrous" and "non-ferrous" is discussed below:

Ferrous metals: The word 'Ferrous' is derived from Latin word 'ferrum' which means iron. 'Ferrous' is an adjective used to indicate the presence of iron in something. **Oxford Dictionary** has defined 'ferrous' as '**chiefly of metals containing or consisting of iron**'. **Oxford Leaner's Dictionary** has also defined 'ferrous' as '**containing iron or connected with iron**'. **Ferrous metals** are therefore those which contain iron. Similarly, **ferrous alloys** are those alloys which contain iron as one of the constituents.

Non-Ferrous metals: Non-ferrous metals are metals that do not contain iron. Thus **any metal or alloy which does not contain iron is non-ferrous metal or alloy**. **Wikipedia** has provided the name of **major non-ferrous metals**. These are, Copper, Aluminum, Magnesium, Nickel, Zinc, Lead, Tin, Tantalum, Gold, Silver, Platinum, Cobalt, Mercury, Tungsten, Beryllium, Bismuth, Cerium, Cadmium, Niobium, Indium, Gallium, Germanium, lithium, Selenium, Tantalum, Tellurium, Vanadium, and Zirconium, Titanium etc. Examples of major **non-ferrous alloys** are brass (an alloy of copper and zinc), Inconel (an alloy of Nickel and Chromium), Monel (an alloy of Nickel and Copper) etc. **It is noteworthy here that stainless does not figure anywhere in these two categories.**

Now the next question which arises is **whether steel contains 'iron' of not?** The **Cambridge Dictionary** has defined 'steel' as 'a strong metal that is



mixture of iron and carbon'. Similarly, Wikipedia has defined the meaning of 'steel' as 'alloys of iron and carbon'. This is also the common meaning of steel understood by all of us. Basically steels are alloys of iron and carbon where iron is the predominant constituent and 'steel' is obtained by adding small quantity of carbon to iron. The carbon content of steel is between 0.002% and 2.1% by weight for plain steels i.e. iron-carbon alloys. Alloys with a higher content of carbon are known as cast iron. So it is clear now that steels are ferrous alloys as these contain iron to the extent of more than 95%, by weight.

The next and the most crucial question is whether stainless steel contains 'iron' or not? The Merriam Webster Dictionary has defined 'stainless steel' as 'a type of steel that does not rust'. Wikipedia has also defined 'stainless steel' as 'steel alloy with a minimum of 10.5% chromium content'. The Cambridge Dictionary also has given the meaning of 'stainless steel' as 'a type of steel containing chromium that is not damaged by air or water and does not change its colour'. From these definitions, it is quite clear that the 'stainless steel' is essentially 'steel' though of a special variety. As, discussed above, the steel containing nearly 95% or more iron by weight, is ferrous in nature, the stainless steel being a special type of steel, is also a ferrous alloy therefore as compared to steels which contain small proportions of alloying elements such as carbon, the percentage of alloying elements in stainless steel is higher though. Nonetheless, the percentage of iron in the stainless steels is very high as compared to the alloying elements and the same may be more than 70% to 85%. Since it contains iron in significant proportions, it is definitely a 'ferrous metal' and not Non-ferrous metal. Therefore these goods are not covered under entry no. 9(b).

The Ld. Counsel of the dealer Sh. Surender Singh has himself admitted in written that Stainless Steel is made of 0.4% Carbon, 1% Nickel, 18% Chromium and 80.6% Iron. It is, therefore, indisputably a ferrous metal and cannot be included under entry no. 9(b) of Schedule-II."

Perusal of the order above, thus, reveals that the same is detailed, self explanatory and well reasoned. In view of the details and discussion given in the impugned order itself, I agree with the respondent that stainless steel scrap brought into the local area being raw material of the category other than the "Waste material and scraps of all types" and "Non-Ferrous Metal & Alloys including scrap thereof" is taxable as per rate under Entry No. 14 of the Schedule-II of the Himachal Pradesh Tax on Entry of Goods into Local Area Act, 2010 for being "14. All Industrial Inputs, raw material and packing material including goods mentioned in this Schedule other than goods mentioned at entry No. 9-b, being brought from outside the State for consumption, sale or use in manufacturing including contract manufacturing, processing, conversion, job-work, assembling or for sale". The rate of tax under Entry No. 14 of the



Schedule-II was @2% w.e.f. 24.01.2011 vide Notification No. EXN-F (10)-2/2010; Loose dated 24.01.2011 which was reduced to 1% w.e.f. 13.07.2011 vide Notification No. EXN-F (10)-2/2010-Loose and further enhanced to 2% w.e.f. 01.03.2014 vide Notification No. EXN-F (10)-4/2011-Part-I. Entry Tax for the years 2013-14 and 2014-15 (up to August 2014) has, therefore, rightly been calculated and levied in accordance with the provisions of the Act as amended from time to time.

7. In view of the foregoing discussions and observations made above and in the impugned order itself, the appeal is liable to be dismissed and ordered accordingly. Subsequently, the order, dated 26-03-2015, passed by the Dy. Excise and Taxation Commissioner, Flying Squad South Zone, Parwanoo under the Himachal Pradesh Tax on Entry of Goods into Local Area Act, 2010 for the years 2013-14 and 2014-15 (up to August 2014) whereby the appellant has been directed to deposit ₹ 58, 82, 807/- is upheld.

8. In view of dismissal of this appeal, the Miscellaneous Application, if any, is also disposed of.

Copies of this order be sent to the parties concerned and file after due completion be consigned to the records.

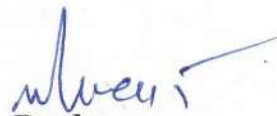


**Commissioner of State Taxes & Excise
-cum-Appellate Authority
Himachal Pradesh**

Endst. No. EXN/CoST&E-Appeals/Reader/2024 /8161-64 Dated 23-03-2024

Copy is forwarded to: -

- 1) M/s Parwati Steel & Alloys, Trilokpur Road, Kala Amb, District Sirmour (HP).
- 2) Jt. Commissioner State Taxes & Excise-cum- Assessing Authority, SEZ at Parwanoo, District Solan (HP).
- 3) ACST&E, Legal Cell.
- ✓ 4) IT Cell.


Reader