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1990 (45) E.L.T. 525 (S.C.)

IN THE SUPREME COURT OF INDIA
S. Ranganathan, N.D. Ojha and J.S. Verma, JJ.

BHARAT FORGE & PRESS INDUSTRIES (P) LTD.

Versus

COLLECTOR OF C. EX.

[1]

Civil Appeal No. 1057 of 1987, decided on 16-1-1990

Pipe fittings such as elbows, bends, reducers etc. classifiable under Item 26AA(iv) of the erstwhile Central Excise Tariff as 'Pipes and tubes' and not under residuary Tariff Item 68 - Mere change in length, size or shape immaterial Entries in Harmonised Code and C.C.C.N. not relevant for classifying goods under erstwhile Excise Tariff being differently patterned and worded. -

The goods described in the Tariff Item 26AA(iv) namely, pipes and tubes are designed to meet various types of requirements. Normally pipes and tubes are produced as long and straight pieces, but by themselves they cannot fulfil all the needs or the end use for which they are intended. To get the maximum use out of the pipes and tubes, it is necessary not only to produce long and straight pipes and tubes but also to turn out pipes and tubes of smaller dimensions and of different shapes and curves such as bends, elbows, 'T' pieces, 'Y' pieces, plugs, caps, flanges, joints, unions, collars and so on. This is done by a process of forging, welding, hammering and so on applied to the longer tubes but basically the items remain the same and the use also remains the same. The tariff entry calls for no distinction between pipes and tubes manufactured out of sheets, rods, bars, plates or billets and those turned out from larger pipes and tubes. Thus it is difficult to say that pipe fittings, though they may have a distinctive name or badge of identification in the market, are not pipes and tubes. It is true that all pipes and tubes cannot be described as pipe fittings. But it would not be correct to say that pipe fittings are not pipes and tubes. They are only a species of pipes and tubes. The use of the words "all sorts" and the reference to the various processes by which the excisable item could be manufactured set out in the tariff entry are comprehensive enough to sweep within their fold the goods presently under consideration. Therefore, the pipe fittings in question are classifiable under Tariff Item 26AA(iv) of the erstwhile Central Excise Tariff and not under residuary Item 68. Even the entries in Harmonised Code as well as Customs Cooperative Counsel Nomenclature are not of any help in determining the scope of Tariff Item 26AA(iv) because Harmonised Code as well as C.C.C.N. makes a distinction between "tubes and pipes" and "pipe fittings" and moreover there are number of sub classifications for these goods while in Tariff Item 26AA(iv) there is only one comprehensive generic entry. [[1985 \(21\) E.L.T. 3](#) (SC) followed]. [paras 4 to 6]

Classification of goods under residuary Entry - Criteria. -

Under a residuary entry only such goods are covered which cannot be brought under the various specific entries in the tariff. In other words unless the Department can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort cannot be had to the residuary item. [para 3]

Dutiability - Manufacture - Merely because goods after processing become different commercial commodity or have a distinctive name does not change Excise classification if they continue to be goods of same species - Pipe fittings made out of pipe and tubes continue to be pipe and tubes - Hence not a different article for Excise classification but only a smaller article within the same classification provided there is no change in basic

physical properties and possible end uses.

[paras 3 and 6]

CASE CITED

INDIAN ALUMINIUM CABLES LTD. v. UNION OF INDIA - [1985 \(21\) E.L.T. 3](#) (SC) [PARA 4]

REPRESENTED BY: Mr. D.N. Mehta, Mr. R. C. Misra and Dr. Meera Agarwal, Advocates, for the Appellants.

Mr. V.C. Mahajan, Sr. Advocate and Mr. R.P. Srivastava, Advocate, with him for the Respondent.

[Judgment per : Ranganathan, (J)].- Item 26AA (iv) of the Central Excise Tariff reads as follows :

“Pipes and tubes (including blanks therefore) all sorts, whether rolled, forged, spun, cast, drawn, annealed, welded or extruded”

The appellants are engaged in the manufacture of pipe fittings such as elbows, bends and reducers. They purchase steel pipes on payment of excise duty from indigenous producers from the open market and they also get steel tubes by way of import. The appellants cut the pipes and tubes into different sizes, give them shape and turn them into pipe fittings in their factories by heating in a furnace (at a temperature between 65 degrees C and 900 degrees C) hammering and pressing. The short question in this appeal is whether the pipe fittings so produced by the petitioners also fall under Item 26AA(iv) or whether they should be classified under tariff item 68, which is the residuary entry.

2. The case of the appellants is that the products manufactured by them are also nothing but pipes and tubes and that they are being virtually asked to pay duty twice over on the same product. According to them the processes undertaken by them do not amount to manufacture and no new product has come into existence as a result of the processes employed in their factories. They say that the pipes and tubes retain their materials and original character and use and they can also be had only from dealers dealing in pipes and tubes. This claim of the appellants has not been accepted by the Central Customs Excise and Gold Appellate Tribunal and hence the present appeal under Section 35L(b) of the Central Excises and Salt Act, 1944.

3. The question before us is whether the Department is right in claiming that the items in question are dutiable under tariff entry No. 68. This, as mentioned already, is the residuary entry and only such goods as cannot be brought under the various specific entries in the tariff should be attempted to be brought under the residuary entry. In other words, unless the department can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort cannot be had to the residuary item. We do not think this has been done. Looking at Tariff Item 26AA(iv), it encompasses all sorts of pipes and tubes. It is also clear that it is of no consequence whether the pipes and tubes are manufactured by rolling, forging, spinning, castings, drawing, annealing, welding or extruding. It is true that initially pipes and tubes may be obtained from sheets, billets or bars by various processes, but the process of manufacture of pipes and tubes does not end there. In order to achieve fully the purpose for which the pipes and tubes are manufactured, it is necessary to manufacture smaller pieces of pipes and tubes and also to manufacture them in such a shape that they may be able to conduct liquids and gases, passing them through and across angles, turnings, corners and curves or regulating their flow in the manner required. Smaller pieces of pipes and tubes differently shaped are manufactured for this purpose. They are merely intended as accessories or supplements to the larger pipes and tubes. They are pipes and tubes made out of pipes and tubes. There is no change in their basic physical properties and there is no change in their end use. There is no reason why these smaller articles cannot also be described as pipes and tubes.

4. But, it is said, they are known in the market differently as pipe fittings, a totally different commercial commodity. The expression “pipe fittings” merely denotes that it is a pipe or tube of a particular length, size or shape. “Pipe fittings” do not cease to be pipes and tubes; they are only a species thereof. This aspect of the matter can be illustrated by the decision of this Court in *Indian Aluminium Cables Ltd. v. Union of India and Others* - [1985 \(21\) E.L.T. 3](#) (S.C.) = 1985 (3) S.C.C. 284. In that case the question was whether “Properzi Rods” manufactured and cleared by the assessee fell within Entry 27(a)(ii) of the First Schedule to the Central Excises and Salt Act 1 of 1944. That entry read as follows :

Aluminium -

(a) Wire bars, wire rods and castings, not otherwise specified.

It was contended, on behalf of the appellant, *inter alia*, that, commercially, Properzi Rods are not known as wire rods in the trade and that a person wanting to purchase Properzi Rods asks specifically for Properzi Rods and not for wire rods. Reliance was also placed on the view taken by this Court that words and expressions describing an article in a tariff schedule should be construed in the sense in which they are understood in the trade by the dealer and the consumer. The Court held that Properzi Rods were only a species of wire rods. It pointed out:

“To sum up the true position, the process of manufacture of a product and the end use to which it is put, cannot necessarily be determinative of the classification of that product under a fiscal schedule like the Central Excise Tariff. What is more important is whether the broad description of the article fits in with the expression used in the Tariff. The aluminium wire rods, whether obtained by the extrusion process, the conventional process or by Properzi process, are still aluminium wire rods. The process of manufacture is bound to undergo transformation with the advancement in science and technology. The name of the end-product may, by reason of new technological processes, change but, the basic nature and quality of the article may still answer the same description. On the basis of the material before us, it is not possible to record a positive finding that Properzi Rods and wire rods are treated as distinct items in commercial parlance. Properzi Rod is a wire rod subjected to the Properzi process and is used for transmission of high voltage electric current.

The position is somewhat similar in the present case. As explained above, the goods described in the tariff, namely, pipes and tubes are designed to meet various types of requirements. Normally pipes and tubes are produced as long and

straight pieces. But by themselves they cannot fulfill all the needs or the end use for which they are intended. To get the maximum use out of the pipes and tubes, it is necessary not only to produce long and straight pipes and tubes but also to turn out pipes and tubes of smaller dimensions and of different shapes and curves such as bends, elbows, 'T' pieces, 'Y' pieces, : plugs, caps, flanges, joints, unions, collars and so on. This is done by a process of forging, welding, hammering and so on applied to the longer tubes but basically the items remain the same and the use also remains the same. The tariff entry calls for no distinction between pipes and tubes manufactured out of sheets, rods, bars, plates or billets and those turned out from larger pipes and tubes. In these circumstances it is difficult to say that pipe fittings, though they may have a distinctive name or badge of identification in the market, are not pipes and tubes. It is true that all pipes and tubes cannot be described as pipe fittings. But it would not be correct to say that pipe fittings are not pipes and tubes. They are only a species of pipes and tubes. The use of the words "all sorts" and the reference to the various processes by which the excisable item could be manufactured set out in the tariff entry are comprehensive enough to sweep within their fold the goods presently under consideration.

5. A certain amount of reliance has been placed on entries in the Harmonised Code as well as in the Customs Cooperative Council Nomenclature (CCCN). We do not, think that these entries and specifications are very helpful. The CCCN contains a number of entries in Section XV, namely, heading nos. 73.17 to 73.20. While heading nos. 73.17 to 73.19 talk of pipes, tubes and conduits, heading no. 73.20 speaks of "tube and pipe fittings (for example, joints, elbows, unions and flanges), of iron and steel". Section XVI also deals with some types of pipes and tubes. The position is similar under the Harmonised Code. In Section XV, there is an equally meticulous sub-division. Headings nos. 73.02 to 06 deal with various types of pipes and tubes. Then comes heading no. 73.07 which specifically talks, of "tube or pipe fittings (for example, couplings, elbows, sleeves) of iron and steel (including stainless steel)" and proceeds to set out various sub-divisions of these items one of which is (7307.23 & 7307.93) "butt welding fittings" which is the item of manufacture in the present case. It is true that "tubes and pipes" and "pipe fittings" fall under different sub-items under the above Codes where the two expressions are used in contrast and the sub-classification is more detailed. That dichotomy cannot be imported into the present context where there is only one comprehensive and generic entry. We cannot, therefore, derive any assistance from those entries.

6. For the above reasons we are of the opinion that the view taken by the Tribunal is not correct and that the assessee's contention that the goods in question fall under item 28AA (iv) should be accepted. We, therefore, set aside the order of the Tribunal and direct the modification of the assessments accordingly. In the circumstances, however, we make no order as to costs.

Judicial Analysis for

**Bharat Forge & Press Industries Pvt. Ltd. vs. Collector Of Central Excise
1990 (45) ELT 525 (S.C.)**

This case was:

- [Relied in 1990 \(49\) ELT 147 \(Tribunal\)](#)
- [Referred in 1991 \(51\) ELT 165 \(Supreme Court\)](#)
- [Referred in 1991 \(51\) ELT 551 \(Tribunal\)](#)
- [Relied in 1991 \(52\) ELT 290 \(Tribunal\)](#)
- [Relied in 1991 \(53\) ELT 370 \(Tribunal\)](#)
- [Referred in 1991 \(54\) ELT 90 \(Tribunal\)](#)
- [Relied in 1991 \(55\) ELT 268 \(Tribunal\)](#)
- [Relied in 1992 \(57\) ELT 136 \(Tribunal\)](#)
- [Referred in 1992 \(57\) ELT 197 \(Tribunal\)](#)
- [Referred in 1992 \(61\) ELT 84 \(Tribunal\)](#)
- [Referred in 1992 \(62\) ELT 430 \(Tribunal\)](#)
- [Referred in 1992 \(62\) ELT 528 \(Calcutta High Court\)](#)
- [Referred in 1992 \(62\) ELT 756 \(Tribunal\)](#)
- [Relied in 1992 \(62\) ELT 835 \(Tribunal\)](#)
- [Distinguished in 1993 \(63\) ELT 717 \(Tribunal\)](#)
- [Referred in 1993 \(64\) ELT 211 \(Tribunal\)](#)
- [Followed in 1993 \(65\) ELT 513 \(Tribunal\)](#)
- [Distinguished in 1993 \(67\) ELT 816 \(Tribunal\)](#)
- [Distinguished in 1994 \(70\) ELT 118 \(Tribunal\)](#)
- [Relied in 1994 \(71\) ELT 728 \(Tribunal\)](#)
- [Referred in 1994 \(72\) ELT 139 \(Tribunal\)](#)
- [Referred in 1994 \(73\) ELT 302 \(Tribunal\)](#)
- [Relied in 1994 \(73\) ELT 536 \(Rajasthan High Court\)](#)
- [Distinguished in 1994 \(73\) ELT 861 \(Tribunal\)](#)
- [Referred in 1995 \(76\) ELT 313 \(Tribunal\)](#)
- [Relied in 1995 \(77\) ELT 877 \(Tribunal\)](#)

- [Relied in 1995 \(78\) ELT 242 \(Tribunal\)](#)
- [Referred in 1995 \(79\) ELT 705 \(Tribunal\)](#)
- [Referred in 1995 \(80\) ELT 145 \(Tribunal\)](#)
- [Referred in 1995 \(80\) ELT 368 \(Tribunal\)](#)
- [Distinguished in 1996 \(87\) ELT 3 \(Supreme Court\)](#)
- [Referred in 1996 \(87\) ELT 262 \(Tribunal\)](#)
- [Distinguished in 1996 \(88\) ELT 431 \(Tribunal\)](#)
- [Distinguished in 1997 \(90\) ELT 104 \(Tribunal\)](#)
- [Relied in 1997 \(90\) ELT 119 \(Tribunal\)](#)
- [Distinguished in 1998 \(97\) ELT 66 \(Tribunal\)](#)
- [Followed in 1998 \(99\) ELT 549 \(Tribunal\)](#)
- [Referred in 1998 \(101\) ELT 109 \(Tribunal\)](#)
- [Referred in 1998 \(102\) ELT 577 \(Tribunal Larger Bench\)](#)
- [Relied in 1999 \(106\) ELT 114 \(Tribunal\)](#)
- [Distinguished in 1999 \(108\) ELT 439 \(Tribunal\)](#)
- [Distinguished in 1999 \(110\) ELT 623 \(Tribunal\)](#)
- [Followed in 2000 \(117\) ELT 729 \(Tribunal\)](#)
- [Relied in 2000 \(118\) ELT 468 \(Tribunal\)](#)
- [Distinguished in 2000 \(121\) ELT 231 \(Tribunal\)](#)
- [Referred in 2001 \(127\) ELT 693 \(Tribunal Delhi\)](#)
- [Referred in 2002 \(139\) ELT 148 \(Tribunal Delhi\)](#)
- [Referred in 2002 \(140\) ELT 385 \(Tribunal Calcutta/ Kolkata\)](#)
- [Referred in 2002 \(140\) ELT 385 \(Tribunal Calcutta/ Kolkata\)](#)
- [Relied in 2002 \(146\) ELT 162 \(Tribunal Madras/Chennai\)](#)
- [Referred in 2003 \(159\) ELT 909 \(Tribunal Delhi\)](#)
- [Relied in 2003 \(159\) ELT 1175 \(Tribunal Delhi\)](#)
- [Referred in 2003 \(162\) ELT 781 \(Commissioner \(Appeals\)\)](#)
- [Referred in 2003 \(162\) ELT 850 \(Tribunal Delhi\)](#)
- [Referred in 2003 \(162\) ELT 1045 \(Tribunal Delhi\)](#)
- [Relied in 2004 \(175\) ELT 811 \(Tribunal Delhi\)](#)
- [Referred in 2004 \(178\) ELT 1099 \(Delhi High Court\)](#)
- [Relied in 2005 \(187\) ELT 101 \(Tribunal Bangalore\)](#)
- [Relied in 2005 \(188\) ELT 365 \(Supreme Court\)](#)
- [Relied in 2006 \(193\) ELT 10 \(Supreme Court\)](#)
- [Relied in 2006 \(193\) ELT 518 \(Tribunal Bombay/Mumbai\)](#)
- [Referred in 2006 \(196\) ELT 400 \(Supreme Court\)](#)
- [Referred in 2006 \(197\) ELT 247 \(Tribunal Bangalore\)](#)
- [Relied in 2006 \(197\) ELT 324 \(Supreme Court\)](#)
- [Relied in 2006 \(203\) ELT 197 \(Madras High Court\)](#)
- [Referred in 2006 \(206\) ELT 830 \(Tribunal Bangalore\)](#)
- [Relied in 2007 \(214\) ELT 491 \(Supreme Court\)](#)
- [Relied in 2008 \(224\) ELT 66 \(Tribunal Ahmedabad\) = 2009 \(16\) STR 247 \(Tribunal Ahmedabad\)](#)
- [Distinguished in 2008 \(225\) ELT 16 \(Supreme Court\) = 2009 \(16\) STR 222 \(Supreme Court\)](#)
- [Distinguished in 2009 \(16\) STR 222 \(Supreme Court\) = 2008 \(225\) ELT 16 \(Supreme Court\)](#)
- [Relied in 2009 \(16\) STR 247 \(Tribunal Ahmedabad\) = 2008 \(224\) ELT 66 \(Tribunal Ahmedabad\)](#)
- [Distinguished in 2009 \(238\) ELT 230 \(Madras High Court\)](#)
- [Relied in 2009 \(241\) ELT 481 \(Supreme Court\)](#)
- [Referred in 2009 \(246\) ELT 83 \(Allahabad High Court\)](#)
- [Referred in 2010 \(253\) ELT 129 \(Tribunal Madras/Chennai\)](#)
- [Distinguished in 2010 \(258\) ELT 428 \(Tribunal Madras/Chennai\)](#)
- [Referred in 2011 \(267\) ELT 79 \(Tribunal Delhi\)](#)
- [Relied in 2014 \(300\) ELT 530 \(Tribunal Calcutta/ Kolkata\)](#)
- [Relied in 2014 \(305\) ELT 255 \(Madras High Court\)](#)
- [Referred in 2016 \(336\) ELT 42 \(Calcutta High Court\)](#)
- [Referred in 2017 \(345\) ELT 564 \(Tribunal Delhi\)](#)
- [Referred in 2017 \(348\) ELT 568 \(Tribunal Chandigarh\)](#)
- [Referred in 2018 \(9\) GSTL 60 \(Madras High Court\)](#)
- [Referred in 2018 \(10\) GSTL 513 \(Supreme Court\)](#)
- [Relied in 2018 \(18\) GSTL 367 \(Appellate Authority For Advanced Ruling under GST\)](#)
- [Referred in 2018 \(364\) ELT 999 \(Tribunal Bombay/Mumbai\)](#)
- [Referred in 2019 \(20\) GSTL 46 \(Allahabad High Court\)](#)
- [Relied in 2019 \(20\) GSTL 238 \(Chhattisgarh High Court\)](#)
- [Relied in 2019 \(26\) GSTL 405 \(Appellate Authority For Advanced Ruling under GST\)](#)
- [Referred in 2019 \(28\) GSTL 397 \(Chhattisgarh High Court\)](#)
- [Relied in 2019 \(28\) GSTL 406 \(Chhattisgarh High Court\)](#)
- [Referred in 2019 \(366\) ELT 544 \(Tribunal Bombay/Mumbai\)](#)
- [Referred in 2019 \(366\) ELT 1025 \(Tribunal Bombay/Mumbai\)](#)
- [Referred in 2020 \(37\) GSTL 456 \(A.A.R. - GST - Karnataka\)](#)

