CASE NO.:
Appeal (civil) 508 of 1998

PETITIONER:
The Tata Iron & Steel Co. Ltd.

RESPONDENT:
Collector of Central Excise, Jamshedpur

DATE OF JUDGMENT: 24/10/2002

BENCH:
S. N. VARIAVA & BRIJESH KUMAR.

JUDGMENT:

(WITH C.A. No. 3530/1997, C. A. Nos. 987-996/1998, C. A. Nos. 2785-2790/2001, C. A. Nos. 3002-3003/2001, C. A. Nos. 3857-3859/2001, C. A. No. 4226/2001, C. A. No. 4227/2001, C. A. 4760/2001, C. A. Nos. 4541-4558/2001, C. A. Nos. 4559-4630/2001, C. A. Nos. 4631-4657/2001 and C. A. Nos. 749-751/2002)

J U D G M E N T

S. N. VARIAVA, J.

Some of these Appeals are filed by the Collector of Central Excise. Other Appeals are filed by Iron or Steel Manufacturing Companies. In all these Appeals common questions of law arise. Therefore all these Appeals are being disposed of by this common Judgment.

Briefly stated the facts are as follows:
Under Section 2(a)(ii) of the Essential Commodities Act, 1955 "iron and steel including manufacture of products of iron and steel" are essential commodities. Section 3 of this Act enables the Central Government to control production, supply and distribution of essential commodities. One of the manners of control could be by regulating price at which the essential commodities are to be bought or sold. Pursuant to the powers given under Section 3 of the Essential Commodities Act, 1955 the Government of India issued the Iron and Steel (Control) Order, 1956. Clauses 15 and 17 (b) of the said Order read as follows:

"15. Power to fix price. - (1) The Controller may from time to time by notification in the Gazette of India, fix the maximum prices at which any iron or steel may be sold (a) by a producer, (b) by a stockholder including a controlled stockholder and (c) by any other person or class of persons. Such price or prices may differ for iron and steel obtaining from different sources and may include allowances for contribution to and payment from any Equalisation Fund established by the Controller for equalising freight, the concession rates payable to each producer or class of producers under agreements entered into by the Controller with the producers from time to time and any other disadvantages. The Controller may also, by a general or special order in writing, require any person or class of person enumerated above to pay such amount on account of allowances for contribution to any Equalisation

Fund, within such period and in such manner as the Controller may direct in this behalf:

Provided that the Controller may, with the approval of the Central Government, fix maximum prices for sale of iron or steel (a) by a producer, (b) by a stockholder including a Controller Stockholder and (c) by any other person or class of persons for export outside India and such prices may be different from the maximum selling prices fixed for sale for other purposes.

Provided further that the Controller may, with the approval of the Central Government, fix maximum controller prices for sale of iron or steel by the Registered Producers and Controlled Stockholders to the manufacturers of engineering goods for fabricating products for export, at prices lower than the maximum selling prices fixed for sale for other purposes.

(2) For the purpose of applying the prices notified under sub-clause (1) the Controller may himself classify any iron and steel and may, if no appropriate price has been so notified, fix such price as he considers appropriate:

Provided that where any stocks are required by a special order of the Controller to be moved from one place to another or are to be sold at a place which is not connected with any railhead, the Controller may direct that the maximum prices fixed under sub-clause (1) or (2), shall not apply to such stocks and may, in respect of such stocks, specify the maximum prices at which the iron or steel may be sold.

(3) No producer or stockholder or other person shall sell or offer to sell, and no person shall acquire, any iron or steel at a price exceeding the maximum prices fixed under sub-clause (1) or (2).

17-B. Power of Central Government to set up committees, etc. - (1) For the purpose of giving effect to the provisions of this order, with respect to any category of iron or steel, whether such category is subject to or exempt from the operation of all or any such provisions, the Central Government may, by notification in the Official Gazette, set up, from time to time, such committees, bodies or authorities as it may consider necessary.

(2) The committee, body or authority set up under sub-clause (1) shall carry out such functions as may be specified in the notification under which such committee, body or authority is set up."

Thus it is to be seen that what could be fixed is the price. The Committees which were to be set up were only to carry out such functions as would be specified in the Notification under which they are set up.

By a Notification bearing no. SC(1)-1(5)/71-B dated 7th April, 1971, a Joint Plant Committee (JPA) and a Steel Priority Committee (SPC) were set up. Clause 8 of this Notification reads as follows:
"(8) The Committee may determine, announce and list prices (base prices as well as extras) from time to time of all categories of iron or steel not subject to price control under clause 15 of the Iron and Steel (Control) Order,

1956. The prices so determined will be ex-works prices. The Controller shall add a fixed element of equalised freight to the ex-works prices announced from time to time in order to ensure that buyers of steel all over the country pay the same railway freight irrespective of the distance from the source of supply. The Committee may take such measures as it considers necessary or desirable to ensure that buyers of iron or steel al over the country pay the same price."

It must be mentioned that the Committees constituted under the Notification consisted of a Chairman, i.e. the Iron and Steel Controller, one representative of each of the main Steel Plants i.e. one from TISCO, one from the Indian Iron and Steel Company Limited, one from the Hindustan Steel Limited, Raurkela, one from the Hindustan Steel Limited, Bhilai, one from the Hindustan Steel Limited, Durgapur and a representative of the Railways. Thus the majority of members in these Committees were from the Iron and Steel Companies who are before this Court.

By another Notification dated 27th December, 1998 the earlier Notification was amended. Sub-clauses (9A) and (9B) were added. These read as follows:

"(9A). The Committee may add an element to the ex-works prices determined under sub-clause (8) for constituting a fund for modernisation, research and development with the object of ensuring the production of iron and steel in the desired categories and grades by the main steel plants. In the matter of operation of this fund, the Committee shall perform its functions in accordance with and subject to, such regulations or directions as may be issued by the Central Government, from time to time.

(9B). The Committee may also add any other element to the ex-works prices determined under sub-clause (8) to enable it to discharge its functions and to implement specific scheme entrusted to it by the Central Government."

At a meeting held by JPC on 16th January, 1992 note was taken of a Notification No. SC/16(6)/91. It was resolved that the members steel plants would add to their ex-works prices certain elements. The relevant Clause of the Notification reads as follows:
"(4) The Committee may from time to time require the member steel plants to add the elements listed below to their ex-works prices of all or any of the categories of iron and steel and to remit the same to the Committee within such periods as may be specified:

(i) an element of price towards the Steel Development Fund for financing schemes, projects and other capital expenditures for modernisation, research and development, rehabilitation, diversification, renewals and replacement, balancing, additions to capacity, major new investments or any other programme for improving the quantum of technology or efficiency of production of Iron and Steel or their quality.

Explanation: The Committee shall perform its functions relating to the Steel Development Fund in accordance with and subject to such orders as directions or may be issued by the Central

Government in this behalf from time to time.

(ii) an element of price for enabling the Committee to discharge its functions and to implement specific schemes entrusted to it by the Central Government ;

(iii) An element of price towards the Engineering Goods Export Assistance Fund." (emphasis supplied)

Pursuant to this Notification these Companies started adding that element to their ex-works price. The Excise Department claims that excise is payable even on this component.

The questions which therefore arise are (i) whether the elements required to be added by the members steel plants, as per the decision of the JPC, are admissible deductions under Section 4(4)(d)(ii) of the Central Excises and Salt Act, 1944 (hereinafter called the said Act) i.e. whether they fall within the definition of the term "other taxes" and (ii) whether such addition, which is a compulsory impost, can be considered and be price on which excise duty is payable by the parties. Mr. Desai has submitted that the Iron or Steel Companies have to compulsory add this element to the ex-works price. He submitted that this therefore is a compulsory exaction. He relied upon the case of Commissioner of C. Ex., Meerut v. Kisan Sahkari Chinni Mills Ltd. reported in 2001 (132) ELT 523 (S.C.). In this case, in the State of Uttar Pradesh there was an Act called the Uttar Pradesh Shera Niyantaran Adhiniyam, 1964. This Act regulated storage, gradation, price, supply and distribution, in Uttar Pradesh, of molasses produced by the sugar factories. Section 8(4) of the Act provided that sugar factories would be liable to pay to the State Government administrative charges as may from time to time be notified. These administrative charges were based on the quantity of molasses sold and supplied by the sugar factories. Section 5 of the Act enabled the factories to recover these charges from the person to whom the molasses were sold. The question before the Court was whether this compulsory exaction fell within the term "other taxes" in Section 4(4)(d)(ii) of the Central Excise Act. This Court held as follows:
"7. Under Section 4(4)(d)(ii) of the Central Excise Act what is to be excluded from the assessable value is the amount of duty of excise, sales tax and "other taxes". Taxes, as such, are not defined in the Central Excise Act. If the expression "tax" is to be understood in the absence of any definition, it would certainly cover any levy. In D. G. Ghose & Co. (Agents) Pvt. Ltd. v. State of Kerala & Anr., 1980(2) SCC 410, broad meaning had been given to the expression "tax". In such an event, administrative charges would be covered under Section 4(4)(d)(ii) as "other taxes" because it is a compulsory exaction made under an enactment and, therefore, a duty or impost and such impost must be held to be in the nature of a 'tax' covered by the aforesaid provisions."

Strongly relying on these observations, Mr. Desai submitted that in this case also there is a compulsory exaction and therefore such compulsory exaction is in the nature of "tax" and is covered by the words "other taxes" in Section 4(4)(d)(ii) of the Central Excise Act

Mr. Desai also drew the attention of this Court to the case of Ispat Industries Ltd. v. Union of India reported in (2000) 4 SCC 137. In this case the Petitioner who was also a manufacturer of iron and steel claimed that they were entitled to financial assistance from the Steel Development Fund. This Court set out all the relevant provisions and then held as follows:

"11. As seen above, SDF was created by notification issued under clause 17-B of the Control Order. Main steel plants form the

primary units of the Joint Plant Committee. It wee only the members steel plants or the main steel plants who were subjected to add an element of their ex-works price and remit the same towards SDF. SAIL and TISCO were the member steel plants. SAIL was having four plants at Bhilai, Bokaro, Durgapur and Rourkela. Indian Iron and Steel Company Ltd. subsequently got merged with SAIL. By notification dated 16-1-1992 the Central Government withdrew the price restrictions under the Control Order and thereafter by notification dated 21-4-1994 contributions by the member steel producers towards SDF was also discontinued. It is the Central Government, which exercises control over SDF though there is no backing of any statutory provision for creation of SDF. The primary object of SDF was to enable the main steel producers for modernization, research and development with the object of ensuring the production of iron and steel in the desired categories and grades by the main steel plants. Other steel producers who were known as secondary producers were not members of the Joint Plant Committee. They were not subjected to add an element of ex-works price of steel but could add any element of their choice and not to make remittance of the same to SDF. It does not stand to reason as to how these secondary producers are entitled to claim any amount from the corpus of SDF or to get some directions issued respecting the use of SDF. The petitioner started production only in April 1998 when four years prior to that remittance to SDF had been discontinued. It is not disputed that the petitioner was not a member of the Joint Plant Committee and did not remit any amount towards the corpus of SDF. The question is if in these circumstances the petitioner could advance a claim or exercise a right on SDF in any manner.

12. It were the members of the Joint Plant Committee who were made bound to add an element of ex-works price and to remit that amount for the constitution of SDF. It has been stated by the first respondent, Union of India, through the affidavit filed by the fourth respondent, Joint Plant Committee, that funds out of SDF were disbursed to the member steel plants by the SDF Managing Committee as per directions issued by the Central Government from time to time. It is then submitted that since early 1990s there has been a general recession in the steel industry. SAIL had approached the Central Government for its financial and business restructuring. SAIL had taken over Indian Iron and Steel Company Ltd., a sick company in the year 1978. Indian Iron and Steel Company Ltd. is a wholly-owned subsidiary of SAIL. The proposal given by SAIL to the Central Government contained various components and measures including waiver of loans from SDF made over to member steel plants which were under SAIL. It will be noticed that the amount of SDF was not in fact remitted to the Central Government but was shown as credit to the Central Government in the books of SAIL and its member steel plants. This proposal of SAIL, it would appear, has since been accepted by the Central Government by its letter dated 18-2-2000 which we have reproduced above.

13. While there was price control under the Control Order during the period 1978-94 when the remittance to SDF was made by the main steel producers, the petitioner was nowhere in the picture and was not subjected to any price control like the main steel producers. The petitioner and other steel producers were free to produce and sell the iron and steel products in the market on the prevailing prices. It has been pointed that the price fixed by the petitioner of its products was much higher than the control price which included elements of SDF. While the collection and remittance to SDF has been discontinued w.e.f. April 1994, the petitioner made its claim for the first time in 1999 which would appear to be rather incongruous. It is submitted that the claim made by the petitioner is not bona fide and the writ petition has been filed with ulterior motives, which are not difficult to fathom. SAIL had stressed immediate need for

restructuring and modernizing all the main steel plants. Due to recession, SAIL has been passing through a severe financial position and has to suffer a loss of Rs. 1574 crores in 1998-99. It has further to suffer the burden of interest to the tune of Rs. 2017 crores per annum for modernization. In the aforesaid circumstances, the petitioner does not have any right to claim any relief in the writ petition pertaining to utilization of SDF. It is quite apparent that from the very nature of the creation of SDF, the manner of remittance to SDF and purpose of its utilization, it is a fund created ultimately for the utilization by the member steel producers only."

Mr Desai submitted that this case shows that what was being added was an element to the ex-works price and that the exaction was a compulsory exaction. He submitted that the manufacturers had no option but to add this element to the ex-works price and to then remit that amount to JPC and the SPC. He submitted that these compulsory exactions were clearly having the nature of a tax.

In order to understand the submission, the provisions of Section 4 of the said Act need to be look at. The relevant provisions of Section 4 read as follows:

"4. Valuation of excisable goods for purposes of charging of duty of excise. (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value shall, subject to the other provisions of this section, be deemed to be

(a) the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale:

xxx xxx xxx
xxx xxx xxx

(4) For the purposes of this section,-

(a) "assessee" means the person who is liable to pay the duty of excise under this Act and includes his agent;

xxx xxx xxx
xxx xxx xxx

(d) "value" in relation to any excisable goods,-

xxx xxx xxx
xxx xxx xxx

(ii) does not include the amount of the duty of excise, sales tax and other taxes, if any, payable on such goods and, subject to such rules as may be made, the trade discount (such discount not being refundable on any account whatsoever) allowed in accordance with the normal practice of the wholesale trade at the time of removal in respect of such goods sold or contracted for sale;"

It is thus to be seen that under the said Act excise duty is chargeable on the value of the goods. The value is the normal price i.e. the price at which such goods are ordinarily sold by the assessee to a buyer, where the buyer is not a related person and the price is the sole consideration for sale. From the price at which the assessee sells to the buyer the only deductions permissible are those under sub-clause 4(d)(ii)

i.e. excise, sales tax and other taxes and in certain cases trade discounts. It is nobody's case that the extra element is an excise or a sales tax or a trade discount. The only question is whether it would fall within the meaning of the term "other taxes".

In Kisan Sahkari Chinni Mills Ltd.'s case, to give a broad meaning to the term "tax", reliance was placed upon the case in D. G. Gose and Co. v. State of Kerala which is reported in (1980) 2 SCC 410. In D. G. Gose's case the question was regarding the validity of tax imposed by the Kerala State on buildings by virtue of the Kerala Building Tax Act, 1975. The validity of this Act was challenged, inter alia, on the ground that this was the tax on the capital value and assessee of an individual or a Company and therefore fell within the scope of Entry 86 of List 1 of the VII Schedule of the Constitution and not under Entry 49 of List 2. On this basis it was urged that the State did not have the statutory authority to impose such a tax. In dealing with these questions this Court held as follows:

"5. The word 'tax' in its widest sense includes all money raised by taxation. It therefore includes taxes levied by the Central and the State legislatures, and also those known as 'rates", or other charges, levied by local authorities under statutory powers. "taxation" has therefore been defined in clause (28) of Article 366 of the Constitution to include "the imposition of any tax or impost, whether general or local or special", and it has been directed that "tax" shall be "construed accordingly"."

Thus it is to be seen that even though the term "tax" has been given a wide interpretation to include all monies raised, the levy still has to be by the Central or State legislatures or by some statutory authority. In Kisan Sahkari Chinni Mills Ltd.'s case the imposition was under a statute enacted by the State of Uttar Pradesh. Thus the levy was by the State. It was thus held that that levy fell within the definition of the term "other taxes".

In the present case, it has already been held by this Court in Ispat Industries' case that there is no backing of any statutory provision for the creation of these funds. Further it has already been held, and in our view correctly, that these main steel plants were the only member steel plants. The levy was only on them and the fund was created for the utilization by these member steel plants only. Also to be noted that even though the Essential Commodities Act empowers regulation of price, it does not empower imposition of any taxes. The addition of an element to the ex-works price has no statutory backing or force. It is not by the Central Government or the State Government or any local authority. It is a levy by a Committee majority of whose members are representatives of the steel plants. The purpose of creating funds is for the benefit of these member steel plants. Such a levy, even though, it may be compulsory can never be "tax".

Mr. Desai then submitted that what was being added was an element to the ex-works price. He submitted that this element cannot be considered to be price on which excise duty has to be paid. It was pointed out to us that, on this question, the Customs, Excise and Gold (Control) Appellate Tribunal, Delhi (CEGAT, Delhi) had, in the case of SAIL v. Collector of Central Excise reported in 1997 (90) ELT 502, held that as the manufacturers were compelled by law to collect this charge over and above the price without right to appropriate it for themselves and with duty of making it over a third party i.e. the JPC, the charges could not be regarded as part of the consideration for the sale price of the goods. It was held that these charges could not be added for determining the assessable value.

It was pointed out that another matter appeared before the Calcutta branch of CEGAT. The earlier Judgment of CEGAT was shown to the Calcutta branch. The Calcutta branch in the case of SAIL & Anr. v. Collector of Central Excise, Bhubaneswar reported in 1998 (24) RLT 394 (CEGAT) differed with the earlier Judgment and held that this addition was nothing but an element of price and that therefore the same had to be included in determining the assessable value for payment of excise duty.

In view of these conflicting decisions, the question was referred to a larger

Bench of CEGAT. In the case of SAIL v. Collector of Central Excise, Bhubaneshwar reported in 2000 (119) ELT 249, the larger Bench held that the normal price was a price at which the goods were ordinarily sold by the assessee to the buyer. It was held that if any part of the amount paid by the buyer to the assessee was not to be appropriated by the assessee then consequently that part cannot be termed as value for the goods. In coming to this conclusion the larger Bench had relied on Judgments of this Court which are set out hereinafter.

In the case of C.I.T. v. Tollygunge Club Ltd. reported in (1977) 2 SCC 790, the question was whether a surcharge collected by the assessee Club from all race goers but which had been earmarked for charity could be deemed to be an income of the assessee and therefore includible in the taxable income of the assessee. It was held by this Court that income tax was a tax on income. It was held that "income" is what reaches the assessee and that it is that income which is intended to be charged to tax under the Income Tax Act. It was held that every receipt by the assessee is not necessarily income in his hands. It was held that the surcharge collected by the assessee was for the purposes of being paid over to local charities. It was held that this surcharge was clearly impressed with an obligation in the nature of trust for being applied for the benefit of charities. It was held that this surcharge was diverted before it reached the hands of the assessee and did not become part of the income of the assessee. It was held that such a surcharge would therefore not be regarded as income assessable to tax.

In the case of C.I.T. v. Bijli Cotton Mills reported in (1979) 1 SCC 496, the question was whether certain amounts realized by the assessee on account of "Dharmada" (Charity) in addition to the price from his customers could be stated to be income in the hands of the assessee which were assessable to income tax. It was held by this Court that though amount of "Dharmada" was undoubtedly a payment which the customers were required to pay in addition to the price of the goods purchased from the assessee. It was held that the purchase of the goods was only an occasion and not the consideration for the "Dharmada" amount. It was accepted that without payment of the "Dharmada" amount the customer would not be able to purchase the goods from the assessee. It was held that this did not make the payment involuntary because the purchaser purchased the goods of his own volition. It was held that the amount of "Dharmada" was being collected for purposes of giving to charities and were held by the assessee under an obligation to spend them for charitable purposes. It was held that these therefore did not form income of the assessee. It was held that these amounts were not part of the price of the goods but were payments for specific purpose of being spent on charitable purposes.

In the case of Mohan & Co. v. Collector of Central Excise reported in 1987 (30) ELT 624, relying upon the above mentioned two decisions of this Court CEGAT, Delhi held that "Dharmada" (charity) receipts were not includable in the assessable value under Section 4 of the Central Excise Act. Mr. Desai submitted that an SLP filed against this order was summarily rejected by this Court.
Mr Desai submitted that all the above authorities including the larger Bench decision of CEGAT and the decision of CEGAT in Mohan & Co.'s case clearly show that when there is a compulsory impost or exaction, the assessee has to collect but the assessee cannot retain for himself and he has to pass on the same, then such a compulsory exaction cannot be included in the value for purposes of assessing excise duty. He submitted that such imposts cannot be deemed to be price. Mr. Desai submitted that the minutes of the JPC dated 16th January, 1992 as well as the Notification of the same date, make it clear that what was being added/levied was an element to the ex-works price. He submitted that the price remained the ex-works price. He submitted that the Companies sold to the customers at the ex-works price. He submitted that the additional amount was merely collected by the Companies for and on behalf of JPC and SPC. He submitted that they did not retain this amount. He submitted that this element could not be considered to be price.

On the other hand, Mr. Rohtagi submitted that the principles under the Income Tax Act cannot be made applicable to the Central Excise Act. He submitted that under the Income Tax Act what is taxable is the actual income received by the assessee for his own benefit. He submitted, with reference to Section 4 of the said Act, that under the Central Excise Act excise duty is chargeable on the value of the goods. He submitted that the value is the price at which the goods are ordinarily

sold by the assessee to the buyer. He submitted that therefore the price which the buyer pays is the price on which excise duty is leviable. He submitted that from the price that the buyer pays, the only deductions can be those set out in Section 4(4)(d)(ii) of the said Act. He submitted that this levy is not a "tax" and does not fall within the meaning of the term "other taxes". He submitted that this element cannot be deducted from the assessable value of the goods.

Mr. Rohtagi further points out that the element which has been added is an "element of price". He relied upon the Notification dated 16th January, 1992 (which has been reproduced hereinabove) and points out Clauses 4(i), 4(ii) and 4(iii) which clearly show that what has been added is an element of price. Mr. Rohtagi submitted that this element could only have been added as price because the JPC and SPC are established by virtue of the Iron and Steel (Control) Order. He submitted that the Iron and Steel (Control) Order is based on the Essential Commodities Act and under that Act there was no power to make any levy or impose any tax on a purchaser. He submitted that the addition being an element of price it has to be included in the assessable value for purposes of excise duty.

We have heard the parties. In our view, Mr. Rohtagi is right. Principles on which "income" is to be determined under the Income Tax Act cannot apply when determining "value" for purposes of Excise Duty. Under the Income Tax Act, tax is payable on income which reaches the assessee. On the other hand, Section 4 of the said Act shows that excise is payable on the price at which goods are ordinarily sold to the buyer. Thus the principles on which Bijli Cottons Mills' case and Tollygunge Club's case were decided would not be appropriate and would not apply for deciding "value" for the purposes of the said Act. In our view the decision of CEGAT in Mohan & Co.'s case cannot be said to be good law.

We are supported in our view by the decision in the case of Hindustan Sugar Mills v. State of Rajasthan reported in (1978) 4 SCC 271. In this case the question was whether the assessee was liable to pay Sales Tax on the amount of railway freight collected by them from the purchaser. It was held that the assessee was bound to pay Sales Tax on such amounts. In the case of E.I.D. Parry (I) Ltd. v. Asst. Commissioner of Commercial Taxes reported in (2000) 2 SCC 321 it was held that the purchase price is the total amount of consideration for the purchase of goods. It was held that this would include price and also other amounts payable by the purchaser. These authorities are under the Sales Tax Act. The principles for computing value for purposes of Sales Tax are similar to those of computing value for purposes of Excise Duty. It is these principles which would apply.
In any event, a plain reading of the Notification makes it clear that what has been added is an "element of price". Neither JPC nor the SPC could have made any compulsory exaction from the purchaser. They could only regulate prices as the powers which they derived are only those which are conferred on them by the Notification which established them. Clause 8 of the Notification dated 7th April, 1971 only gave a power to determine the prices. The amended Clauses (9A) and (9B), which were introduced by Notification dated 27th December, 1978, also empowered them merely to add elements to the ex-works price. In other words the ex-works price could be increased by adding an element to it. Thus what was being added was to the price. Another aspect to be kept in mind is ultimate beneficiaries of these amounts are the steel plants themselves.

In our view therefore the view expressed by the larger Bench of CEGAT, Delhi cannot be said to be the correct view. In our view, the decision of CEGAT, Calcutta in SAIL v. Collector of Central Excise reported in 1997 (90) ELT 502 is correct.

In this view of the matter, the Appeals filed by the Revenue are allowed. The Appeals filed by the Companies against the Judgment, in the case of SAIL v. Collector of Central Excise reported in 1997 (90) ELT 502 are dismissed.

We are told that in some of the matters the question of a proper calculation of the duty also arises. We are told that CEGAT did not undertake the exercise of proper calculation as they held in favour of the assessee. In those cases where a question of re-calculation arises, the matters will necessarily stand referred back to CEGAT for determination of the exact amounts in accordance with law. Parties to jointly intimate the Office, a list of such matters. In case of dispute liberty to apply.

With these directions the Appeals stand disposed of. There will be no order as to costs.