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Bombay High Court

Case No: Writ Petition No. 326 of 1981

Sahney Steel and Press Works Ltd., Bombay	APPELLANT
Vs	
Union of India and others	RESPONDENT

Date of Decision: June 16, 1987

Citation: (1987) 89 BOMLR 309 : (1989) 22 ECC 204 : (1988) 36 ELT 94 : (1987) MhLj 765

Hon'ble Judges: H. Suresh, J

Bench: Single Bench

Judgement

1. This petition relates to the classification of the goods, namely "starter armatures" under the Central Excise and Salt Act, 1944 (hereinafter referred to as "the Act"). The question is whether the goods are to be classified under Item 34A of the First Schedule to the Act as parts of motor vehicles, or whether the said goods are to be classified under Item 30(4) of the First Schedule of the Act, as parts of the electric motors. It is well settled that the classification of the products must be done in the sense in which they are understood in the trade by the dealers and the consumers and not on the basis of any technical or dictionary meaning of the products (see : Indian Aluminium Cables Ltd. Vs. Union of India and Others, . Mr. Rana appearing for the petitioners pointed out that if you go to Lohar Chawl in Bombay, where electrical goods are sold, you would not get "starter armatures", for that you have to go to Opera House where automobile spare parts are sold. I think this should have satisfied the Central Excise in this matter, but normally they never give up. That is what has happened in the present case.

2. Some minimum facts : The petitioners have been manufacturing starter armatures which are a part of automobile starter motors. They say that they are exclusively used in the manufacture of starter motors. From the inception, the petitioners have contended that the goods are classifiable as parts of motor vehicles and not otherwise. However, by an order dated 23rd October, 1973, the Assistant Collector classified these goods as

parts of electric motors under Item 30, sub-item (4). The petitioners preferred an appeal against this decision to the Appellate Collector to Central Excise. The Appeal was rejected. Thereafter the petitioners preferred a revision application to the Government. That was also rejected. Hence the petitioners had to file the present petition.

3. Item 30(4) of the First Schedule is as follows :

"Electric Motors, all sorts and parts thereof, namely :

1. x x x x x x x x x x x x x x x x x

2. x x x x x x x x x x x x x x x x x

3. x x x x x x x x x x x x x x x x x

4. Parts of electric motors.

Explanation - This item does not include motors specially designed for use in gramophones or record players and all parts of such motors."

The relevant portion of Item 34A as it stood then and on which the respondents rely is as follows :

"Parts and accessories of motor vehicle not otherwise specified."

It is the contention of the Central Excise that even though the starter armatures can be considered as parts of motor vehicle, they are otherwise provided or specified and, therefore, the same would come under Item 30. They rely on the words as contained in Item 30 viz., "Electric motors, all sorts and parts thereof." They contend that this being parts of an electric motor, the starter armatures must necessarily come under Item 30(4).

4. Mr. Master appearing for the Central Excise drew my attention to the definition of "armature" as given in I.E.E.E. Standard Dictionary of Electrical and Electronics Terms (Second Edition by Frank Jay Editor in Chief) which is as follows :

"armature (1) (rotating machinery)". The member of an electric machine in which an alternating voltage is generated by virtue of relative motion with respect to a magnetic flux field. In direct-current universal, alternative-current series, and repulsion-type machines, the terms is commonly applied to the entire rotor."

Mr. Master also, pointed out that the function of the armature is to rotate and, therefore, to do the work of an electric motor and, therefore, it must necessarily be considered as a part of electric motor under Item 30(4) of the First Schedule to the Act. He submitted that the function of the armature is to convert electric energy to mechanical one and that such motors are used in various other items, and the function is the same, whether it is a fan or a mixer or a car. He also submitted that if any repair is to be carried out for an electric

motor, that has to be done by an electrician and, therefore, it cannot be considered as a part of a motor vehicle as such.

5. At the outset, I must mention that the burden is on the Department as regards the classification of any goods under the Schedule and therefore, they must tell as to how a starter armature affixed to a motor vehicle can ever be considered as a part of electric motor and not a part of a motor vehicle. That burden has not been discharged at all. Secondly, I find no answer from the Central Excise as to the trade understanding in respect of this product. It is commercially known as starter motors and not as electric motors. In fact the petitioners rely on two certificates - one issued by the Bombay Motor Merchants Association Ltd. and the other issued by the All India Automobile and Ancillary Industries Association. There is no reason as to why these two certificates should not be accepted by the Court, inasmuch as the certificates have been issued by the Associations which represented the trade. The certificates clearly indicate that these armatures are treated as part of automobile ancillary and that these parts can be procured only from the market dealing with the automobile ancillaries and not from the market dealing with electric motors. The certificates also indicate that the armatures fitted into the starter, which is meant for use in the automobiles, cannot be used elsewhere.

6. Mr. Rana, in fact, has drawn my attention to the case of Advani-Oerlikon Ltd. v. Union of India, reported in 1981 ELT432, which clearly says that the meanings in fiscal statutes must be as people in trade and commerce, conversant with the subject, generally treat and understand them in usual course, and not otherwise. It also says that standards books containing technical information meant for technical people, have been consistently rejected as guidelines for classification, by the Supreme Court. Therefore, in my view the Department is clearly in the wrong when it says that the starter armature can be treated as a part of electric motor and not as apart of automobile spare parts.

7. Mr. Master submitted that Item 34A as it stood then, itself makes a distinction between parts of motor vehicles which would come under that item and parts which are otherwise specified. Therefore, he submitted that parts of electric motors come under Item 30(4) and, therefore, starter armatures should be considered as items otherwise specified. I am afraid, that cannot be the reasoning at all. If one has regard for the Schedule under the Act, one finds various items chargeable for excise duty under different headings and after specifying each item generally there is a clause under such main heading, specifying items, such as "not otherwise specified". For example, Item 19 which has the main heading of "Cotton Fabric", the sub-items thereafter mention various items under that heading and at the end of it there is the sub-item (5) which says : Cotton Fabrics, not otherwise specified." Similarly Item 17 has the main heading of "Paper" and the last of the sub-item says : "As other kinds of paper and paper board not otherwise specified". So also Item 23-B has the main heading of "Chinaware and Porcelainware" has the Last sub-item (4) : "not otherwise specified". I am referring to some of these items to indicate the general scheme of the Schedule. Firstly an item must all under a particular class to which it belongs. If the item is specifically mentioned under that class, the duty shall be as

mentioned therein. If it is not specifically mentioned, then the question is as to whether an item belonging to that class as such has been provided elsewhere, and if it has been so provided, the duty will be as per such specification. If it is not so provided, then it must necessarily fall under the residuary item, being Item 68 of the Schedule. Therefore, when we look at item 34A, the item deals with "parts and accessaries of motor vehicles". But if there is any part of motor vehicle provided elsewhere, that item would not fall under Item 34A. Mr. Rana drew my attention to the item relating to "Tyres" which comes under Item 16. Under this heading, sub-item (1) deals with "Tyres for motor only" and that is how it has been specifically provided for. Therefore, if one reads Item 34A with Item 16 it becomes clear that "Tyres" as part of motor vehicles has been otherwise specified under Item 16. But certainly, starter armature as part of motor vehicles has not been provided elsewhere and therefore it must necessarily be classified under Item 34A.

8. In Atul Glass Industries (Pvt.) Ltd. Vs. Collector of Central Excise, the Supreme Court considered the question of classification of "window screen" which are fitted to motor vehicles. The question was as to whether "window screens" can be described as an item of glass or glassware under Item 23A or whether the same should be treated as part of Item 34A as part of a motor vehicle. On course, by the time, this case came to be decided, Item 34A was amended and certain parts of motor vehicle were specifically mentioned under that item. However, "window screen" were not included in that item. It was, therefore, contended that "window screens" could be considered as an item coming under the sub-heading "not otherwise specified for, "and, therefore, the same would come under Item 23A, sub-item (4) which deals with "glass of glassware". This contention was negatived by the Supreme Court and the Supreme Court held that the item must be considered in its commercial sense and it is in that sense it becomes a part of a motor vehicle. Again it was also held that if it was not provided under Item 34A, then it would come under the residuary item 68. In other words, this item must necessarily be construed as part of a motor vehicle and not under any other item which does not deal with any part of motor vehicle. Mr. Rana has drawn my attention to the fact that even in other allied Acts such as the Customs Tariff Act and also under the Import Trade Control Policy, distinctions have been made between "starter motors" and "electric motors" and also "starter armatures" and these have always been accepted as parts of motor vehicle. It is not necessary for me to refer to those items, inasmuch as the initial burden of saying that this particular item cannot be treated as part of motor vehicle but must necessarily be treated as a part of electric equipment, has not been discharged by the Department at all. In the result, the decision given by the Department will have to be set aside and I, therefore, pass the following order :

9. The impugned order dated 5th April, 1980, being Exhibit "H" to the petition, stands quashed. There will also be a further order in terms of prayer (b)(i), (ii), (iii), and (iv). However, as regard the payment of interest, I direct as follows : That is to say, the respondents must refund the amount within a period of three months from today. If they fail to refund the amount within the aforesaid period, then in that even they would be

liable to pay interest from today till payment at the rate of 18 per cent per annum.

10. I further direct that the Bank Guarantees furnished by the petitioners pursuant to the interim order dated 23rd September, 1975 which had been passed in Writ Petition No. 960 of 1975 and which was made applicable to the present petition also, would stand cancelled and discharged. So also the bond executed by the petitioners would stand discharge. If the petitioners have paid any further amounts pursuant to the interm order during the pendency of this petition by way of duty, the respondents would be bound to refund those amounts also within the same period as mentioned above and would be subject to the same order as regards interest.

11. The petitioners would also be entitled to the costs of this petition.

12. At the request of Mr. Master, the operation of the order relating to discharge the of Bank Guarantee and the Bond, it stayed for a period of four weeks from today.