(1984) 11 KAR CK 0018

In the Karnataka High Court

Case No : Writ Petition No. 20908 of 1980

Associated Electronic and Electrical Industries Pvt. Ltd. APPELLANT

Vs

Assistant Collector of Central Excise, Bangalore and Others RESPONDENT

Date of Decision : 06-11-1984

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1985) 4 ECC 11 : (1986) 6 ECR 68 : (1985) 22 ELT 368 : (1985) ILR (Kar) 3716

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Advocate : S. Rangarajan and K.G. Raghavan, for the Appellant; K. Shivashankar Bhat, Central Govt. Senior Standing Counsel, for the Respondent

Judgement

1. M/s. Associated Electronic and Electrical Industries (Bangalore) Private Limited, a company incorporated under the Companies Act of 1956, which is the petitioner, is inter alia engaged in the manufacture of a sophisticated equipment called "intercommunication telephone equipment." The equipment is used for internal communications or as an internal telephone in modern offices, establishments, hotels and restaurants both private and Government. In common parlance or in colloquial language, the equipment is called as "intercom".

2. On 26th December, 1973, the petitioner filed the classification list in form No. 1 prescribed by the Central Excise Rules of 1944 ("the Rules"), framed under the Central Excises and Salt Act of 1944 (Central Act 1 of 1944) ("the Act"), in which it claimed that the equipment manufactured, was a "telephone" and was not eligible to excise duty under item No. 33D of the First Schedule to the Act ("item No. 33D") in particular and the Act in general. On examination of the same and apparently rejecting the same, the Assistant Collector of Central Excise, Bangalore-I Division, Bangalore ("the Assistant Collector") by his Notice No. C.V./33D/17/3/71 dated 22nd April, 1974 (exhibit B), called upon the petitioner to show cause as to why the same should not be charged to duty under item No.

33D as an "intercom machine". In response to the said notice, the petitioner filed its reply on 8th May, 1974, before the Assistant Collector reiterating its earlier stand. On an examination of the show cause notice, the reply and the records, the Assistant Collector by his order dated 7th August, 1974 (Annexure D), confirmed his show cause notice and directed the petitioner to clear the manufactured equipments on payment of duty thereon as stipulated in item No. 33D and the Act. Against the said order of the Assistant Collector, the petitioner filed an appeal in Appeal No. 51 of 1978 before the Appellate Collector of Customs and Central Excise, Madras ("the Appellate Collector") who by his order dated 11th January, 1978 (Annexure G), dismissed the same. Against the said orders of the Appellate Collector and the Assistant Collector, the petitioner filed a revision before Government of India, which by its order dated 30th June, 1980 (Annexure J), dismissed the same. In this petition under article 226 of the Constitution, the petitioner has challenged the aforesaid orders.

3. As before the authorities, the petitioner has asserted that the equipment manufactured by it was a "telephone" and was not exigible to duty under the Act. In support of that claim, the petitioner has also relied on a decision rendered by the Central Board of Excise and Customs, New Delhi ("the Board") on 25th January, 1980 (Annexure K), in an appeal filed by the India Telephone Industries, Bangalore ("ITI").

4. In their common return, the respondents have justified their orders on the very grounds on which they have held against the petitioner and other grounds also. The respondents have asserted that "telephones" manufactured by the ITI and supplied to the postal department of Government were telephones and not "intercoms", which were "office equipments". The assertion of the petitioner that in an appeal of the ITI, the Board had decided on the very question in its favour is not denied, though it was represented at the hearing that Government had suo moto sought to revise the same under the Act.

5. Sri S. Rangarajan, learned counsel for the petitioner has urged that the equipment manufactured by his client was a "telephone" that was expressly excluded by item No. 33D and was not eligible to excise duty in any event under that item of the Act.

6. Sri. K. Shivashankar Bhat, learned Central Govt. Senior Standing Counsel appearing for the respondents, has urged that the equipment, an intercom was an "office equipment and apparatus" dutiable to excise duty under item No. 33D of the Act. Sri Bhat has alternatively urged that the same was in any event dutiable to duty from 1st March, 1975, under item No. 68 of the Act.

7. All the authorities have concurrently found that the equipment manufactured by the petitioner was not "telephone" but was "intercom machine" dutiable to excise duty under item No. 33D of the Act. But, in reaching their conclusions, every one of them have given their own reasons, some of which are not beyond reproach. In this view, it is proper to ignore their reasons and examine the

question independently.

8. In the appeal of ITI (Annexure K) under the Act, the Board dealing with a similar equipment manufactured by that company, reversing the decision passed by the Collector of Central Excise, Bangalore, had expressed that it was not (sic) a "telephone" and was not exigible to duty under item No. 33D of the Act. In their return, the respondents have not denied this assertion of the petitioner and have not offered any explanation for ignoring or not following the same except the explanation offered by Sri Bhat at the hearing which I have noticed earlier.

9. The order of the Board in the appeal of ITI was made on 25th January, 1980. Before the authorities, the petitioner who was probably unaware of the same does not appear to have relied on the same. Under the Act, as it then stood, the order of the Board was not binding on Government though the same was binding on the Appellate Collector and the Assistant Collector, unless they held that it was distinguishable on any other ground. Whatever that be, the order of the Board is not binding in this Court. The question is not concluded by the ruling of the Supreme Court or this Court. In this view and also for the very reasons stated by the Supreme Court at para 11 in Coromandel Fertilisers Ltd. v. Union of India 1984 ELT 607 (S.C.), there is no alternative for me except to examine the question without reference to the views expressed by the Board in ITI case, which I propose to do.

