

(1974) 12 GUJ CK 0002
In the Gujarat High Court

Case No : S C A No's. 1251/72, 1668/73 and 1164/74

Balkrishna Rechhodlal Shah and Others

APPELLANT

Vs

Assistant Collector of Central Excise and Others

RESPONDENT

Date of Decision : 18-12-1974

Acts Referred:

Citation : (1991) ECR 311 : (1979) 4 ELT 377

Hon'ble Judges : J.B. Mehta, J;B.K. Mehta, J

Bench : Division Bench

Judgement

J.B. Mehta, J.—The short question which arises in all these three petitions is whether the domestic grinding mills or flour mills in question manufactured by the petitioners attract the duty under the amended entry 33C which came into force with effect from March 1, 1969, by the Finance Act, No. 14 of 1969. So far as the first two petitioners are concerned at the initial stage the authorities had required them to apply for the licence for manufacture of these domestic flour mills. The authorities had asked these two petitioners to include in the price list the value of the electric motor. However, finally, the authorities took a view that this domestic grinders were non-excisable under entry 33C as they had no inbuilt electric power motor. Therefore, so far as the petitioners manufacturers were concerned, the aforesaid entry 33C was not attracted. So far as other similar products were concerned, even the Central Government had in the order, dated May 31, 1972, taken this view. The Government found the manufacturer's contention justified that such domestic appliances which had no inbuilt electric motor would not attract Central Excise Item 33C, because that entry was applicable to sophisticated types of units in which electric motor was used in the unit itself and the working parts were so specially designed and were integrated into a whole unit as to form such domestic electric appliance. In view of this decision of the Central Government, all the petitioners had not to pay any such excise duty. This view was in accordance with the relevant trade notice dated March 5, 1969, No. 26 of 1969 which had been issued by the authorities notifying that Government of India had clarified that the exemption notification No. 33 of

1969, dated March 1, 1969, by which certain categories of domestic electric appliances were brought under exemption purview should be construed as referring only to such appliances as have inbuilt electric devices to operate them instantaneously when connected with the main or with the power. In other words, the appliances referred to in the notification which did not have inbuilt electrical devices did not attract the levy. All trade Associations, Chambers of Commerce and Members of R.A.O. were requested to bring this to the notice of their members-manufacturers. Thereafter the Central Government has now sought to levy duty on the very same article by taking a different view as per the order which is challenged by the second petitioner, dated September 17, 1973. In that order they have pointed out that according to the size, capacity, output and the small horse power of the motor required for this appliance, it was clearly a domestic appliance and it was advertised as such domestic appliances. It was further pointed out that the design in the unit was such that the motor was specially fitted to the unit, and therefore, such grinders were liable to be assessed as domestic electrical appliances under Item 33C of the tariff Schedule. Accordingly even the first petitioner in whose case the collectorate had taken a final decision that these domestic flour mills were non-excisable under entry 33C were also required to pay duty under this item. The same is the case of the third petitioners who are fresh manufacturers. Therefore, all these three petitioners have challenged the aforesaid levy under Item 33C.

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3. Therefore, this entry 33C will have to be read along with this relevant exemption notification issued under rule 8 by the Central Government as they formed one integrated scheme of levy of excise. Under Item 33C domestic electrical appliances not elsewhere specified are included and under Explanation I, these electrical appliances are those normally used in the household and similar appliances used in hotels, restaurants, hostels, offices, educational institutions, hospitals, train kitchens, aircraft or ships' pantries, canteens, tailoring establishments, laundry shops and hair dressing saloons. Under Explanation II, along with the appliances, even interchangeable parts or auxiliary services accompanying an appliance to make it suitable for various purposes are to be assessed to duty along with the appliance. The exemption notification of March 1, 1969, however, exempted domestic electrical appliances falling under this item 33C other than those 20 specific which were specified in the Schedule :
- The specific entry in the Schedule which is referred to in this connection in Item "3. Grinders and Mixers". In fact, all these Schedule entries make one thing clear that all these appliances are completely assembled appliances and, therefore, they would have the electric element of electrical motor fitted with them. Unless the manufacturer has manufactured a complete domestic electrical appliances, which falls under any of these 20 items of the Schedule, in view of this exempted and the entry 33C, duty under this item would not be attracted. If, therefore, the manufacturer has only produced domestic appliance which can by properly fitting into it a separate electric motor be converted into a domestic electric grinder,

excise duty in question would not be attracted. The excise duty falls on the manufacture or production of the goods in question. It is not a duty on the sales, therefore, whatever may have happened at the stage of sale, as in this case, that a particular manufacturer at the time of sales is supplying to the customer this request electric unit manufactured by some other manufacturer or the customer at his place gets the electric motor fitted into this unit, it is obvious that what was manufactured by the petitioners was not an electrical appliance but what can be completed into one whole electrical appliance after purchasing a separate electric motor manufactured by another manufacturer. That is why even the further exemption notification, which was issued on the same day i.e. March 1, 1969 for giving partial exemption to the extent duty was paid on electric motor in case of such domestic electrical appliances which attracted duty, has specifically mentioned that electrical appliance must be one fitted with duty paid electric motor, rotor or starter. It is this electric element or motor or rotor or starter which gives the specific character to the goods of this description as electrical appliances. Unless electrical part is fitted into it by which the said appliance works and the rest of the assemblage would be only a domestic appliance which could not fall within the specific tariff item, of electric appliances, but would be any other kind of power driven domestic grinder. It is only when the electric motor is fitted into it that it becomes a domestic electric grinder so as to attract duty under Item 33C. Therefore, the Central Government's first order was clearly in accordance with scheme of this tariff item. That interpretation was even announced to the trade by the aforesaid trade notice.

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5. Mr. Vakharia, next contended that the aforesaid trade notice could not control the plain meaning of the statute. Even in this connection, the legal position is now well settled. In *J.K. Steel Ltd. v. Union of India* [1978 E.L.T. (J 355)] in the majority view, it was in terms pointed out that it was permissible to look at notification issued by the Central Government which had given reliefs of various kinds. Even in the dissenting judgment of his Lordship Hegde J. the same view is taken after referring to the settled legal position. At page 1186 it was pointed out that it was clear that several Judges in England had referred to the subordinate legislation made under a statute for the purpose of interpreting that statute, though for the limited purpose of knowing how the department which was entrusted with the task of implementing that statute, had understood that statute. In the case of fiscal statutes, it might not be inappropriate to take into consideration the exemption granted in interpreting the nature and the cope of the impost. In the matter of fiscal legislation the initiative was in the hands of the executive. Generally speaking, the question of exemption was left to the discretion of the Government. It ought to be so because the exercise of that power depended on various circumstances some of which could not be anticipated in advance. But yet the levy and exemptions were parts of the same scheme of taxation. The two together carried into effect the purpose of the legislation. For finding out the true scheme of a taxing measure, the Court has to

take into consideration not merely the levy but also the exemptions granted. The Supreme Court in *Kailash Nath and Another Vs. State of U.P. and Others*, held that the exemption granted, in pursuance of notification issued under the U.P. Sales Tax Act must be considered as having been contained in the parent Act itself. One English decision which earlier referred to by his Lordship was of the House of Lords, reported in (1951) A.C.P. 531 where it was pointed out that although the regulations could not control the construction of the Act, it was of some importance to consider whether they fitted into the construction which the Act properly bore. Therefore, even though the trade notice could not alter the meaning of the words of the statute, it could be looked at as being an interpretation placed by the appropriate Government department on the words of the statute. Here we are not reading a trade notice for the purpose of controlling the plain meaning of the tariff entry. We are only read at it as even the Government construction fits in and support our prima facie construction the relevant entry, when it is read with the entire exemption scheme. As earlier pointed out by us, the excise levy is on the production or manufacture and is not a sales tax levy. Therefore, what is taxed is production or manufacture and in the article at the stage of production or manufacture was an unassembled article or was not completely interpreted whole domestic electrical appliance, it is obvious that the excise levy under the relevant entry 33C would not be attracted. Keeping in mind this relevant scheme, of the exemption notification in the relevant Schedule, which covered only those appliances which were complete domestic electrical appliances by specifying 20 of these items and the partial exemption which was given of duty paid at the earlier stage on the electric motor in the second para of that notification it is clear that it is only when the electric motor, rotor or starter is inbuilt in the electrical appliance that such domestic electrical appliance attracts duty under the relevant entry 33C. Therefore, the trade notice was completely in accordance with the relevant scheme on this taxing statute and the Central Government has in the subsequent decision proceeded on a complete misconception and has plainly misread the provisions of this entry. Therefore, the impugned levy in case of the petitioners is wholly ultra vires the aforesaid entry 33C, so far as these domestic flour mills or domestic grinders are concerned.

6. Mr. Vakharia has of course vehemently argued that so far as petitioner No 1 was concerned, it was stated even in the petitions that the domestic grinder is a mechanical device consisting of two stones and other mechanical parts. These mechanical parts operate by power provided by a separate electric motor and V belts. In fact, in all the three cases there is no dispute that the petitioners, manufacturers were not manufacturing electric motors, and the grinder manufactured by them had to be fitted with the electric motor. It was only when the customers wanted an electric motor to be fitted by purchasing a separate electric motor by a different manufacturer that the electrical part was added in this mechanism. Therefore, the electric motor was a totally separate part which was not manufactured by these manufacturers. It had to be fitted into the

manufactured item of the petitioners. It is wholly immaterial that at the stage of sale, the petitioners at the request of the customers fit an electric motor or leave it to the customers to get electric motor remitted into this unit. That would not make the article in its original state excisable as manufactured by the petitioners. In that view of the matter the entire levy under Article 33C was wholly illegal and ultra vires. In that view of the matter, all three petitioners must be allowed by quashing the impugned levy and declaring that the petitioners domestic grinders do not attract duty under the relevant entry 33C. There-fore, respondents authorities are restrained from levying any duty under the aforesaid entry 33C on these goods in question. Rule is accordingly made absolute with costs in each case. The aforesaid order shall be stayed for a period of six weeks from today.