(1984) 09 KAR CK 0021

In the Karnataka High Court

Case No : Writ Petition No''s. 505/79 and 13620/83

Best and Crompton Engineering Ltd. APPELLANT

Vs

Joint Secretary, Govt. of India RESPONDENT

Date of Decision : 04-09-1984

Acts Referred:
Central Excise Rules, 1944 — Rule 10A (2)

Citation : (1995) 76 ELT 571

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

Bench : Single Bench

Advocate : K.P. Jagadeeshan, for the Appellant; K. Shivashankar Bhat, Sr. Central Govt. Standing Counsel, for the Respondent

Judgement

1. As the parties in these cases are common and the questions that arise for determination are either common or inter-connected, they can conveniently be disposed of by a common order. I therefore propose to dispose of them by a common order.

2. Among others, the petitioner is engaged in the manufacture of power driven pumps called "Monobloc Pumps" (hereinafter referred to as the "Pumps") at its factory situated at Yediyur of Bangalore City and on the pumps so manufactured, it filed the requisite price and classification lists before the competent Officer under the Central Excises and Salt Act, 1944 (hereinafter referred to as the Act) claiming that they were dutiable under Tariff Item Entry No. 30-A of the Act who approved the same. On that basis, the petitioner paid the duties payable thereon under the Act for the period from 18-4-1972 to 31-7-1972.

3. But, on 3-8-1982, a show cause notice was issued to the petitioner under Rule 10-A(2) of the Central Excises and Salt Rules, 1944 to show cause for recovery of difference of duty short-levied for the aforesaid period, in response to which, the petitioner filed its objection before the Assistant Collector of Central Excise, Bangalore Division, Bangalore (hereinafter referred to as the Assistant Collector) opposing the same. On 26-10-1972, the Assistant Collector by his order of that

date (Exhibit-B) over-ruled the objections of the petitioner and confirmed the show cause notice and directed the petitioner to pay the difference of duty of Rs. 60,506.25 for the aforesaid period which has been paid by it under protest.

4. Against the said order of the Assistant Collector, the petitioner filed and appeal before the Appellate Collector of Central Excise, Madras, who by his order dated 23-7-1975 (Exhibit-C) dismissed the same. Against the said orders of the Appellate Collector and the Assistant Collector, the petitioner filed a revision petition before Government of India which by its order dated 29-10-1977 (Exhibit-D) dismissed the same. In writ petition No. 505 of 1979, the petitioner has challenged the orders of Government, the Appellate Collector and the Assistant Collector and has sough for a mandamus for refund of the amounts paid thereto under protest.

5. On the basis of the aforesaid orders, the petitioner made payments of excise duty on the pumps for the subsequent period also and on different dates, filed series of refund application under the Act before the Assistant Collector claiming refund of excess duty stated to have been paid by it. On those claims of the petitioner, the Assistant Collector made an order on 28-5-1983 (Annexure-F in W.P. No. 13620 of 1983) partly allowing its claims and partly rejecting them. In W.P. No. 13620 of 1983, the petitioner has challenged the said order of the Assistant Collector in so far as it has rejected its claims for refund.

6. According to the petitioner, the pumps manufactured by it were one integrated unit which did not contain any electric motors or any parts of electric motors which were dutiable under Tariff Item No. 30 of the Act and that were manufactured by it were exclusively dutiable under Tariff Item No. 30A of the Act. In their orders made for the period from 18-4-1972 to 31-7-1972, all the authorities have held that the pumps also contained identifiable and separate electric motors, which were dutiable under Tariff Item No. 30 of the Act. Unfortunately, in reaching that conclusion, none of the authorities examined the question in depth and decided the same on assumptions only. But, in examining the later claims of the petitioner for refunds, the Assistant Collector has examined the matter in depth and has recorded his findings as hereunder :

"10. Monobloc pump sets basically consist of a rotor and stator with a shaft passing through the rotor, on one end of which is mounted the impeller to the pump. In addition several other small parts are also fitted to this assembly, the entire assembly in turn being located in a frame which is sealed completely. When power is fed to the electric portion of the pump, namely, the stators and rotors, the shaft to both the driving portion and the pump portion rotates. This in turn rotates the impeller fixed to it. The impeller discharges water as a result of the rotary motion given to it. The pump assembly portion is sealed of from the driving portion through proper gladding packing so that no liquid enters to the driving portion of the pump. It is very clear from the printed catalogue of the party in respect of their monobloc pump set that if the pump portion fitted on to the shaft is removed that is driving portion. However, if this driving portion as such has to be individually categorised, it definitely cannot be called as an electric motor, known in the market as such. It no doubt serves the function of an electric motor but even then it is not identical to an electric motor. On the other hand, there is absolutely no doubt that the stator and the rotor are distinctly identifiable components of this driving portion which came into being separately and which are mounted in the casing. It has also been well-settled that in the manufacture of monobloc pump sets the motor portion as such does not come into being but rotor and stator definitely come into existence. Therefore, duty has to be paid on the rotor and stator which come into existence in the manufacture of monobloc pump sets. The party"s contention that no separate driving portion as such come into existence but what is manufactured is only full integrated pump is not correct. Definitely the rotor and stator as such come into existence and duty is chargeable on the same in the case of monobloc pump sets for handling water.

11. Let us now move to on the transformer oil pump set. This transformer oil pump set is similar in functioning to a monobloc pump set for handing water. There are however some basic differences.

(a) Whereas in the monobloc pump set for handling water the driving portion is completely sealed off from the pump portion to prevent water entering into the driving portion, in the case of transformer oil pump set no such sealing exists and the oil in fact freely circulates throughout the entire pump set portion.

(b) Whereas the driving shaft in the monobloc pump set for handling water is solid, in the case of transformer oil pump set the driving portion is hollow and oil in fact circulates in this hollow shaft to help cool the whole mechanism as such. Thus it can be seen that the transformer oil pump is in fact more monobloc in construction than even the ordinary monobloc pumpset for handling water. As in the case of monobloc pumpset, if the pump portion which basically consists of an impeller mounted on a common shaft and embedded in casting in removed, what is left is the driving portion with a hollow shaft. In this case also by no stretch of imagination can we say that what is left after the pump portion is removed is an electric motor ordinarily known in the market as such. But, in this case also there is absolutely no doubt that Rotor and Stator as such come into existence independently and identifiable as such. Therefore for all practical purposes the transformer oil pump can be classified as monobloc pumpset, the only difference being that one is meant for handling water and the transformer oil pump set is used to circulate oil in oil immersed transformers. For this purpose the impeller design and material used are slightly different from that of an ordinary monobloc pumpset for handling water. Reverting back to the point in question, it is thus very clear that as in the case of monobloc pump set no electric motor as such comes into existence in the case of transformer oil pump set. However, the rotor and stator as such definitely comes into existence and duty is chargeable on the same". On the basis of these findings, the Assistance Collector allowed refunds in part. On the substantial finding recorded by the Assistant Collector to the effect that the pumps do not certain identifiable electric motors, the petitioners accepts the same and has no grievance. But, its grievance against this order is limited only to the finding on the ''rotors'' and ''stators'' and their chargeability to duty under the Act.

7. On the very finding recorded by the Assistant Collector in his order dated 28-5-1983, the petitioner contends that the findings recorded for the period from 18-4-1972 to 31-7-1972, that is the subject of challenge in W.P. No. 505 of 1979, cannot be upheld by this Court and its claim thereto had to be allowed in its entirety.

8. In their common return, the respondents do not rightly dispute the order made by the Assistant Collector on 28-5-1983 and the correctness of his findings in that order. But, still, they have sought to support the orders made for the earlier period as also the said order made by the Assistant Collector in its entirety.

9. Sri K. P. Jagadeeshan, learned counsel for the petitioner, strenuously contends that on the very finding recorded by the Assistant Collector on 28-5-1983 to the extent that is not challenged by his client as also the Revenue, his client was entitled to succeed in W.P. No. 505 of 1979 in its entirety without remitting the matter on any of the issues.

10. Sri K. Shivashankar Bhat, learned Senior Standing Counsel for the Central Government, appearing for the respondents sought to support the orders impugned in W.P. 505 of 1979.

11. Earlier, I have noticed that in their orders made for the period from 18-7-1972 to 31-7-1972, every one of the authorities proceeded to levy difference of duty on the pumps as if those pumps also contained identifiable electric motors which were separately chargeable to duty under Tariff Item No. 30 of the Act in addition to subjecting them to duty under Tariff Item No. 30-A of the Act. But, in reaching their conclusions, none of the authorities have really applied their mind to the questions that arose before them and have written speaking orders as enjoined on them under the Act as ruled by the Supreme Court in The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, . On this short ground, the orders made by the authorities challenged in W.P. No. 505 of 1979 cannot be upheld. But, the question is whether this Court should on that score accept the case of the petitioner in its entirety or direct the original or any of the appellate or revisional authorities to re-determine the question.

12. Earlier, I have made copies reference to the findings recorded by the Assistant Collector on the very manufactured article and its components also, in which he had definitely and clearly found that the pumps manufactured by the petitioner did not contain identifiable electric motors which are chargeable to duty under Tariff Item No. 30 of the Act to duty under Tariff Item which is the sole basis for collecting difference of duty from the petitioner for the period from 18-4-1972 to 31-7-1972. From this, it follows that the findings recorded for the

aforesaid period and is the sole basis to collect difference of duty from the petitioner totally disappears and it is entitled to succeed in its claim in W.P. No. 505 of 1979, in entirety without remitting to examine any other questions.

13. So far as higher duty, if any, paid for the period from 1-8-1972 and onwards is concerned, the petitioner has necessarily to seek for their refund before the authorities in the first instance. I have no doubt that the authorities will deal with them with due regard to the order made in W.P. No. 505 of 1979.

14. With this, I now proceed to examine the case of the petitioner in W.P. No. 13620 of 1983.

15. Sri Jagadeeshan next contends that the finding recorded by the Assistant Collector on ''rotors'' and ''stators'' as separate components and are parts of electric motors dutiable to separate duty was inconsistent with his earlier finding on electric motors and was illegal.

16. Sri Bhat in supporting the order of the Assistant Collector to the extent that is also challenge contends the same should have been agitated only in statutory appeals under the Act.

17. Sri Jagadeeshan does not dispute that the (sic) of the Assistant Collector on 28-5-1983 to the extent it decided against the petitioner was appealable. But, he contends that if the petitioner had filed appeals, they would have met the same fate as for the earlier period, for which reason, it did not avail rightly that remedy and that notwithstanding the same, this is fit case in which this Court should exercise its extraordinary jurisdiction in favour of the petitioner.

18. For the earlier period, the authorities had cursorily dealt with the matter and had decided against the petitioner. In that situation, it is legitimate to hold that the petitioner was justified in not approaching the appellate authority under the Act. Even otherwise, existence of an alternative remedy does not really touch on the jurisdiction of the Court; but is only one of the factors to be taken into consideration in exercising its jurisdiction. In any event, this Court will not be justified in upholding this objection with due regard to all the facts and circumstances and the pendency of the earlier writ petition. I see no merit in this objection of Sri Bhat and I reject the same.

19. On holding that ''rotors'' and ''stators'' were dutiable to separate duty, the Assistant Collector had not determined under which tariff entry they were at all dutiable. Even assuming that his finding on those articles is correct, then also, the Assistant Collector should have determined the chargeability of those items under the Act and regulated the refund claims on that basis, which he had failed to do. On this short ground, this Court has necessarily to direct the Assistant Collector to re-examine the matter.

20. Whether ''rotors'' and ''stators'' are parts of electric motors or have to be treated as integrated parts of pumps has not also been fully and adequately examined by the Assistant Collector. So also the plea of the petitioner that the

finding recorded by the Assistant Collector on ''rotors'' and ''stators'' was inconsistent with his finding on electric motors has also not been fully examined by him. For all these reasons it is proper to quash that part of the order of the Assistant Collector that holds that rotors and stators were separate identifiable items and were chargeable to duty and direct him to re-determine them.

21. In the light of my above discussion, I make the following orders and directions :

(i) Writ Petition No. 505 of 1979 : I quash the impugned orders in their entirety and direct the respondents to refund the amounts paid by the petitioner for the period from 18-4-1972 to 31-7-1972 with all such expedition as is possible in the circumstances of the case. But, this does not prevent the respondents to adjust the amounts that are refundable to the petitioner to any of the duties payable by it under the Act for any subsequent period also.

(ii) Writ Petition No. 13620/1983 : I quash the order dated 28-5-1983 of the Assistant Collector in so far as it holds that ''rotors'' and ''stators'' are separate and identifiable items and are chargeable to duty under the Act and direct him to restore the proceedings to that extent only to their file and re-determine them in accordance with law as the observation made in this order. But, this order does not prevent the respondents from adjusting the amounts to any other duties payable under the Act for any other periods also.

22. Writ petitions are disposed of in the above terms. But, in the circumstances of the cases, I direct the parties to bear their own costs.