

(1980) 04 GUJ CK 0002

In the Gujarat High Court

Case No : Special Civil Application No. 673 of 1977 with Special Civil Application No. 674 of 1977

Bomin Private Limited

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-04-1980

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)
Central Excises and Salt Act, 1944 — Section 4, 4(4)

Citation : (1981) 8 ELT 18 : (1980) 2 GLR 121

Hon'ble Judges : S.L. Talati, J; S.H. Sheth, J

Bench : Division Bench

Advocate : J.G. Shah, for the Appellant; S.B. Vakil, for the Respondent

Judgement

S.H. Sheth, J.—The petitioner has been manufacturing mono-block pumping sets which are used for drawing water from the wells. Electric motor is a component part of a mono-block pumping set which the petitioner has been manufacturing. The petitioner has been manufacturing electric motors as well which are fitted to his pump sets. It is not in dispute before us that electric motors are excisable goods under Tariff Item 30 in the 1st Schedule to the Central Excises and Salt Act, 1944. Pump sets are excisable under Tariff Item 30-A. It is the case of the petitioner that in case where excise duty is payable on these two items separately he pays it.

2. On September 29, 1976 the Assistant Collector of Central Excise issued notice to the petitioner calling upon him to pay excise duty which was shortly levied during the period commencing from March 1, 1975 and ending on April 3, 1975. The petitioner replied to that notice. The Assistant Collector of Central Excise thereafter made an order by which he demanded the payment of short levied excise duty from the petitioner. The petitioner challenged that order in an appeal which he filed before the Collector of Central Excise. The Collector dismissed the appeal and confirmed the order made by the Assistant Collector. The petitioner

did not move the Central Government against the appellate order by filing a revision application but filed in this court special civil application No. 763/77.

3. For the period commencing from April 4, 1975 and ending on February 29, 1976 a similar notice was issued by the Assistant Collector of Central Excise to the petitioner. The petitioner replied to it and after hearing the petitioner the Assistant Collector made a similar order against the petitioner. That order was challenged by the petitioner in appeal before the Collector of Central Excise who dismissed it and confirmed the order made by the Assistant Collector. That order is challenged in special civil application No. 674/77.

4. The question which Mr. Shah has raised before us is whether excise duty is payable on the value of an electric motor plus duty payable thereon when it forms a part of the pumping set on which duty is separately payable under Tariff Item No. 30-A. Mr. Shah has invited our attention to the notification of exemption issued by the Central Government on March 17, 1972. That notification partially remits the excise duty payable on power-driven pumps. The material part of that notification reads as follows :-

"In exercise of the powers conferred by sub rule (1) of rule 8 of the Central Excise Rules, 1944 the Central Government hereby exempts power driven pumps falling under Item No. 30-A of the First Schedule to the Central Excise and Salt Act, 1944 (1 of 1944), and specified in column (2) of the Table annexed hereto from so much of duty of excise leviable thereon as is in excess of the duty specified in the corresponding entry in column (3) of the said Table."

This extract clearly shows that under this notification exemption from payment of a part of the excise duty, otherwise payable on the power-driven pumps under Item 30A, has been given. This part by itself has no application to the excise duty payable on electric motors. There are two provisos to this notification. The first proviso inter alia reads as under :-

"Where the aforesaid power driven pumps on which the duty of excise is leviable are fitted with duty paid internal combustion engines falling under sub-item (ii) of Item 29 or electric motors falling under sub-item 2(ii) of Item No. 30 of the First Schedule to the aforesaid Act, such power driven pumps shall also be exempt from so much of the duty of excise leviable thereon as is equivalent to the duty of excise or the additional duty u/s 2A of the Indian Tariff Act, 1934 (32 of 1934) as the case may be, already paid on such internal combustion engines or electric motors."

5. We are not in the instant case concerned with the internal combustion engines falling under sub-item (ii) of item 29. We are concerned with the electric motors falling under sub-item 2(ii) of Item No. 30. Sub-item 2(ii) of item 30 specifies electric motors designed for use in circuits at a pressure exceeding 400 volts and exceeding 10 H.P. The other part of the first proviso" covers the cases falling under sub-item 2(1) of item No. 30 It reads as under :-

"Where the aforesaid power driven pumps on which the duty of excise is leviable are fitted with duty paid electric motors, other than those electric motors falling under sub-item 2(ii) of item No. 30, or fitted with duty paid rotors or stators falling under that Item, of the aforesaid schedule, such power driven pumps shall also be exempted from so much of the duty of excise leviable thereon as is equivalent to the duty of excise or the additional duty u/s 2A of the Indian Tariff Act aforesaid, calculated at the rate of 10 per cent ad valorem on such electric motors or motors or stators, as the case may be."

6. The argument which Mr. Vakil has raised is that this notification does not grant exemption to electric motors from the payment of excise duty. That argument is correct. It does not grant exemption from payment of excise duty to electric motors. However, we are not concerned in this case with the payability or otherwise of excise duty on electric motors. The question with which we are concerned is whether while determining the assessable value of monoblock pumping set to which an electric motor is fitted, the value of such an electric motor should include excise duty payable thereon as if it is independent item. The first proviso to the notification makes it crystal clear that while determining the value of a monoblock pumping set of which an electric motor is a part, excise duty payable on such an electric motor cannot form a part of its value which in its turn will be a part of the assessable value of a monoblock pumping set. The notification upon which Mr. Shah has placed reliance therefore directly helps him in vindicating the contention which he has raised before us.

7. Now we turn to the definition of "value" given in section 4 of the Central Excises and Salt Act. Section 4 was amended with effect from October 1, 1975. Section 4 as it was prior to its amendment on October 1, 1974 was different from the amended section. It provided for the concept of wholesale cash price for the purpose of determining the assessable value. Explanation to section 4 (unamended) read as follows :-

"Explanation - In determining the price of any article under this section, no abatement or deduction shall be allowed except in respect of the trade discount and the amount of duty payable at the time of the removal of the article chargeable with duty from the factory or other premises aforesaid."

8. We are referring to section 4 as it was, before it was amended because a part of the period in respect of which demand was made, was covered by the old section. A part of the period is covered by the amended section. The explanation therefore, clearly provides that no abatement or deduction could be allowed except in respect of the trade discount and the amount of duty payable at the time of removal of the article chargeable with duty from the factory or other premises aforesaid. It suggests that if duty was payable on excisable article at the time of its removal from the factory, it must be deducted from its assessable value. In other words, assessable value which was made up of manufacturing costs and manufacturing profits could not be inflated by adding to it the excise duty payable thereon at the time of removal from the factory gate. The amended

section 4 defines "value" inter alia in the following terms :-

"Value in relation to any excisable goods does not include the amount of the duty of excise, sales tax and other taxes, if any, payable on such goods...."

This definition also makes it clear beyond any doubt that the value or assessable value of an excisable goods cannot be inflated by including therein the amount of excise duty payable on such goods.

9. The question, therefore, which arises for our consideration is whether the expression "payable on such goods" used in amended section 4 and the expression "article" used in section 4 before it was amended means the whole of it or also connotes a part thereof. Unless by application of manufacturing process two articles have been transferred into a single article known by a distinct name in the market or having a distinct use and identity they do not change their character. We are, therefore, of the opinion that unless the transformation is so complete as to change the identity of "goods" (used in amended section 4) and "article" (used in section 4 as it was before amendment) includes a part thereof. Looked at from this angle we are of the opinion that where excise duty is payable on an electric motor which is used for making a power driven pump it cannot be included in the assessable value of the power driven pump of which electric motor forms a part. When we say that it is payable we not only mean payable and recoverable but we also mean payable and in respect of which exemption has been granted. When excise duty which is payable and recoverable on an electric motor cannot be included in the assessable value of a power driven pump of which it forms a part, it can much less be included in a case where it is payable but in respect of which exemption has been granted. That is the reason why we have stated in this judgment that this expression applies both to a case where it is a payable and recoverable and also to a case where it is payable but in respect of which exemption has been granted. It is no body's case that by fitting the electric motor to a pumping set, a new "goods" with a distinct identity and a distinct name is brought into existence.

10. Mr. Vakil has raised a preliminary objection to the maintainability of this petition. He has argued that the petitioner ought to have moved the Central Government against the impugned appellate orders made by the Collector of Central Excise before filing the present petition. The question which has been raised for our consideration relates to the interpretation of section 4 as it has been after amendment and section 4 as it was before its amendment and the exemption notification. Therefore, we do not think it wise and expedient to dismiss this petition in limine on this ground after the petitioner has waited for more than three years from the date on which the Assistant Collector of Central Excise made the impugned orders.

11. In light of the reasons which we have given the impugned orders are quashed and set aside. If the amount or amounts of short levy have been paid by the petitioner under the impugned orders it or they shall be refunded to the

petitioner. Rule is made absolute in each of the two petitions with costs.

EDITOR'S COMMENTS

As per the provisions of section 4(4)(d)(ii) of the Central Excises and Salt Act, 1944, the assessable value of excisable goods shall not include the duty payable on "such goods". Therefore, while determining the assessable value of Power Driven Pumps, only the duty payable on such pumps shall not form part of the assessable value. But the duty payable on electric motor attached to such P.D. Pumps is not to be excluded from the assessable value of P.D. Pump because when such electric motors are attached to P.D. pumps they do not have their own independent identity distinct from the P.D. Pumps. Moreover, under Tariff item 30A of the First Schedule to the Central Excises and Salt Act, 1944, only those pumps are liable to duty which are power driven, therefore, unless the electric motors or I.C. Engines are attached to the pumps they would not merit classification under Tariff item 30A.

The Gujarat High Court in para 9 of the judgment has admitted that if by application of manufacturing process two articles have been transformed into one single article, then the duty paid on such two articles would not be excluded while determining the value of resultant article. Since in the present case a Power Driven Pump cannot come into existence without attaching an electric motor thus by attaching an electric motor to a pump, a new single article known by a distinct name and identity comes into existence for the purposes of Tariff item 30A and accordingly the duty paid on electric motor cannot be excluded while determining the assessable value of P.D. pump because such electric motor does not have its own independent identity distinct from the P.D. pump, rather the electric motor is an essential component Part of the P.D. pump and therefore, is a part and parcel of P.D. Pump without which it cannot function.

Moreover, the provisions for the exclusion of excise duty from the assessable value has been made in section 4 of the Central Excises and Salt Act with reference to "such goods". While determining the assessable value of P.D. pump the duty paid/payable on electric motor which is attached to it, cannot be deducted because electric motor cannot in any circumstance be described as "such goods" specially when power driven pump as a whole is liable to duty under Tariff item 30A and such pump does not come into existence unless electric motor is attached to it. If this aspect would have been considered by the Gujarat High Court then the final verdict would have been different.