

(1981) 01 KAR CK 0005

In the Karnataka High Court

Case No : Writ Petition No's. 4295 and 5317/76

British Physical Laboratories India Private Limited

APPELLANT

Vs

The Assistant Collector of Central Excise, The Appellate
Collector, Central Excise and The Government of India,
Insurance

RESPONDENT

Date of Decision : 02-01-1981

Acts Referred:

Central Excise Act, 1944 — Section 35 (2)

Citation : (1981) ECR 259D

Hon'ble Judges : M.K. Srinivasa Iyengar, J

Bench : Single Bench

Judgement

M.K. Srinivasa Iyengar, J.—The petitioner No. in both the writ petitions is common and it is convenient to dispose of both the matters by a common order.

2. The question involved in both these writ petitions is whether the machinery manufactured by the petitioner which is styled as Electronic Stencil Scanner, the manufacture of which was started in 1973, was liable to excise duty in pursuance of the notification dated 1-3-1970 produced as Exhibit R-2 along with the counter-affidavit filed by the respondents. By virtue of that notification, all items falling under item No. 33D of the First Schedule to the Central Excises and Salt Act, 1944 (hereinafter referred to as the Act) except those specified in the schedule annexed to the said notification were exempted from payment of excise duty. The schedule to the notification listed 30 items. In response to a communication addressed by the Petitioner submitting that the said machinery was not liable to excise duty and seeking advice in regard to the excitability to duty, the Assistant Collector of Central Excise maintained that it would be liable to excise duty under item No. 13 specified in the notification viz., "Reproducing Machines". The petitioner maintained that this view was not tenable, but under protest arranged to pay the duty and finally the matter was adjudicated by the Assistant Collector. The relevant portion of his order is to be found in para-5 and is as follows:

I have gone through the entire case file including the show cause notice, the reply to the show cause notice and the record of personal hearing. The contention of the party that the machine in question is not a reproducing machine as it cannot reproduce but can only cut the stencil by a process of scanning, is not acceptable. What the machine does is reproducing the original matter which is then fixed on the stencil duplicator for taking out the required No. of copies. The Dictionary meaning of reproduction includes "to produce a copy of." Hence there is no doubt so long as the machine in question produces a copy of the original matter it is a re-producing Machine....

He accordingly held that the petitioner was liable to pay excise duty on the basis that the machine was a reproducing machine falling under tariff item No. 33D of the First Schedule to the Act, the rate of duty being 10 per cent ad valorem. The order of the Assistant Collector was dated 8-6-1973.

3. The petitioner took up the matter in appeal before the Appellate Collector of Central Excise, Madras. In the memorandum of appeal it was explained that the name "Electronic Stencil Scanner" actually represented the function of the machine and was not the brand name or trade name and that expression "scanning" was derived from Television Technology. The relevant submission of the petitioner before the Appellate Collector of Central Excise was as follows:

The word "Scanning" is derived from Television Technology. Oxford Concise Dictionary gives the meaning of "Scan" as "to resolve (a picture) into its elements of light and shade for purposes of transmission." The Electronic Stencil Scanner does exactly this. By process of scanning, the intensity of light or shade on the surface of the document, drawing or design is transmitted into an electronic circuit in the Machine wherein the same is converted into electrical impulses which are then applied to the Special Stencil through a stylus. The stylus charged with the electrical impulses moving on the surface of the stencil engraves it according to the intensity of the electrical impulses. In other words, the Electrical Stencil Scanner simply cuts a stencil.

The stencil so cut, enables as ordinary stencil Duplicating Machine to reproduce a number of copies of the document.

The function of this Electronic Stencil Scanner can be broadly compared to the block making function in printing technology. Although the impression of any design, photograph, documents is engraved in the form of a block, the Block Making device itself cannot be called a "Reproducing Machine." The actual "Reproduction" takes place in the Printing Machine. In the similar manner the Electronic Stencil Scanner only prepares a stencil for use on a Reproducing Machine viz. Stencil Duplicating Machine. Therefore the Electronic Stencil Scanner itself cannot be classified as a "Reproducing Machine."

Under the circumstances, we beg to state that the Electronic Stencil Scanner manufactured by us does not fall within the classification of "Reproducing Machine" and hence it is not dutiable. We therefore request you to kindly set

aside the order passed by the Asstt. Controller of Central Excise, Bangalore".

The Appellate Collector of Central Excise accepted the contention of the petitioner. He agreed with the petitioner that the electronic stencil scanner did not come under the definition of reproducing machine and allowed the appeal. But, the Government of India in exercise of the powers conferred u/s 35(2) of the Act issued notice to the petitioner to show cause why the order of the Appellate Collector should not be reversed. The petitioner made a detailed representation in a communication dated 16.9.1974 (Exhibit "H"). It is useful to extract a few of the paragraphs from that representation which are as follows:

6. The Asstt. Collector has relied on the ordinary dictionary meaning of reproduction which includes "to produce a copy of". Though this meaning is not disputed, he has erred in holding that the present machine produces or reproduce a copy of the original document. As stated in the show cause notice itself, the scanner can only make perforations conforming to the original matter, but it is not a copy of the original inasmuch as it is not visible as a copy and it is not the exact replica of the principal matter. To obtain a copy or replica of the original matter, the stencil paper has to be put in a duplicating machine, and the copies taken. Therefore could only be called as copies or exact replicas of the original matter. The stencil itself is not a copy or replica of the original matter and it cannot be used for the proposes for which the originals or a copy thereof can be put to. As such, my submission is that the stencil obtained from using the electronic Stencil Scanner can be used for reproducing copies, but itself is not a copy or replica of the original matter. This is a fact which can be proved by visual examination of the stencil obtained from using this machine and for paper appreciation of the matter, it is requested that the Joint Secretary may kindly inspect the machine and see its working on actual demonstration.

7. Normally and for commercial use, a reproducing machine must be capable of reproducing a number of copies or replica of the original matter. Assuming for the purpose of argument that reproducing even of a single replica of the original matter could qualify for being termed as reproducing machine, my submission is that the stencil obtained by using electronic stencil scanner is not a copy or replica of the original matter. No person will accept the stencil as a copy, where a copy is required to be given and the stencil is not known in common usage as a copy or replica of the original matter and the Court's decision mentioned above are equally applicable in considering whether the stencil is a copy of the original matter.

8. Normally, the expressions used in the customs/Central Excise Tariff have the same meaning as those used in the Brussels Tariff Nomenclature, the latter being the highest International authority on the subject. According to the definition of a reproducing machine given therein, it is a machine which operates by a master punched card to reproduce a number of similar punched cards containing all or certain of the holes on the original master card Further, the essential characteristics of a reproducing machine are (i) operation by a master punched

card and (ii) reproducing a large number of similar punched cards or impressions. In the present case, both these essential characteristics are conspicuously absent and therefore, the scanner is not a reproducing machine. An extract from Section XVI 84.53 of the explanatory note to the Brussels Tariff Nomenclature is enclosed herewith. In para 9 of that representation, the submission that had been made in the appeal before the Appellate Collector of Central Excise was reported. Further referring to what had been indicated in the show cause notice that production of even one copy would constitute the machine as a reproducing machine and while submitting that this view is not a reasonable one, it was stated in paras 10 and 11 of the representation as follows:

10...However, even if it is assumed for the purpose of agreement that reproducing even a single copy or replica of the original matter would qualify for being termed as reproducing machine, my submission is that in the present case it does not reproduce even a single replica of the original matter. As already submitted, a copy or the replica must be exact copy of the original matter capable of being seen or read as the original itself, but in the present case, the stencil obtained by the use of the scanner is not a copy or replica of the original as it is not capable of being seen or read in the same manner as the original. It is only a stencil and unless copies are taken by using a duplicator or reproducing machine, it cannot be called a copy or replica of the original matter. A visual examination of the stencil obtained by using the scanner will prove this fact.

11. It is also stated in the show cause notice that perforations made by the electronic stencil scanner on the special stencil paper conform fully to the original drawings, tracings, etc., and do not represent anything other than the original matter fed by the scanner. But this is not factually correct. Though the copies that may be taken by using the stencil in a duplicating machine conform fully to the original matter, the stencil itself is not a copy or replica of the original matter as it is not visible as the original itself and cannot be used for a purpose for which the original or a true copy thereof is used. Therefore, it is factually incorrect to say that the stencil itself is a copy or replica of the original matter.

12. The Government of India in its order (Exhibit "J") dated 20.5.1976, after referring to the issue of show cause notice and the earlier proceedings and paraphrasing the submission that had been put forth by the petitioner, did not agree with the contention of the petitioner. The reasoning of the Government of India is contained only in paragraph-4 of its order. It is as follows.

13. The Government of India has considered the submissions of the party and observe that Electronic Stencil Scanners operate on electro-optical principle and by this process the image is transferred to a special stencil, which is rolled in another equipment to get a number of copies on ordinary paper. As the transfer of the image to the special stencil also is tantamount to reproduction, Electronic Stencil Scanner should be treated as a "Reproducing Machine."

15. Consequent on the order of the Appellate Collector the petitioner had not

paid any excise duty on the machine manufactured for the subsequent period. As proceedings were initiated for collecting excise duty for the subsequent period consequent on the order of the Government of India and a notice dated 18.6.1976 (marked as Exhibit "R" in Writ Petition No. 5317 of 1976) was issued demanding excise duty on the said electronic stencil scanners manufactured and cleared during the period of March 1974 to October 1975 and coercive action was suggested in the event of the failure to comply with the demand, the other writ petition was filed and an order staying further proceedings was made.

16. It is contended for the petitioner that there is no definition of the expression "reproducing machine" in the Act or the Rules and the meaning of the words in a taxing statute must be as people in the trade and commerce conversant with the subject generally treat and understand them in usual course. Reliance was placed in this behalf on the decision of the Supreme Court in *Dunlop India Ltd. v. Union of India and Ors.* AIR 1977 S.C. 597 as also on the decision in *Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and Others*, . In the former case, the Supreme Court in paragraph 36 of its judgment observed as follows:

...It is clear that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. But once an article is classified and put under a distinct entry, the basis of the classification is not open to question. Technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance, we then see no difficulty for statutory classification under a particular entry.

In *Union of India (UOI) and Others Vs. The Tata Iron and Steel Co. Ltd.*, , the Supreme Court emphasized the need for adopting a clear definition of a term as otherwise it would give rise to scope for arbitrary assessment. It is urged by Shri C. Sarangan learned counsel for the petitioner that the several specific objections taken have not been considered or pronounced incorrect by the Government of India; yet the order of the Appellate Collector had been reversed. He further submitted that in *Brussels Tariff Nomenclature*, the reproducing machine is given a particular connotation which is as follows:

Reproducing Machines : This is operated by a master punched card to reproduce a number of similar punched cards containing all or certain of the holes on the original master card.

His argument was, generally that nomenclature was adopted in the fiscal statutes dealing with tariffs and excise duty in this country and the same connotation should be applied and if so applied, the machine under consideration would not answer that description.

17. Shri U. L. Narayana Rao, learned Counsel for the respondents however submitted that it may not be safe to rely upon the description in the *brussels nomenclature* as we are dealing with an indigenously manufactured article. I am not able to appreciate the submission made on behalf of the respondents

because the machine under consideration cannot be said to be an article of indigenous character. It is to be noted that the name given to the machine or its description does not per-se indicate that its function is to reproduce something. The actual functioning of it which has been described by the petitioner in its representations, has not been doubted or contradicted, but what has been done is to treat the stencil which is cut by the machine as being a copy of an original and thereby interring that mere was a reproduction of the original and consequently the machine is a reproducing machine. In my opinion, the conclusion is based on an assumption which is not warranted. It has been explained specifically that the stencil as such is not treated as a copy and would not be acceptable to any customer as a copy and actually would not represent the original in exactness and a copy of it could be got only by fixing the stencil to a duplicator and. then applying ink to flow. Therefore if the stencil is not fixed and rotated in a duplicator, no copy of the original could be had or can be said to in existence at this stage. Only by the further process and feeding the stencil to the duplicator and operating the latter, a copy could be got. The stencil that is cut by the machine under consideration can, in these circumstances only be said to be an intermediate product which aids or facilitates the production of copies by another machine. The assumption made by the Assistant Collector that the stencil itself is a copy of the original was without any basis. The conclusion of the Government of India, as has been extracted above, is also on the same lines as that of the Assistant Collector. The observation that transfer of the image to the special stencil also tantamounts to reproduction does not, in my opinion, stand to reason at all. It had been specifically pleaded before the Government of India that this scanner was not a reproducing machine as understood in the commercial sense and in the ordinary parlance and the machine was not known as such to persons dealing in the business" or trade, and no material has been brought on record to show that the petition was otherwise. A further contention that had been put forth was that the scanner made perforations conforming to the original matter, but it was not a copy of the original matter inasmuch as it was not visible as a copy and was not the exact replica of the principal matter. The Government of India has not come to a conclusion that these submissions were in any way incorrect. It did not point out to any other material showing that the stencil itself was a copy of the original matter.

18. Shri Narayana Rao argued that, the etching that is to be found on the stencil is a reproduction of the original. I do not find any substance in this because a look at the stencil would show that it does not bear any resemblance to the original matter and only by a further process a copy of the original matter could be got and placing of the stencil with the original matter side by side would not indicate that the two were identical.

19. In the Chambers dictionary of Science and Technology, the expression "scanning" and allied expressions have been described. More of these expressions give any indication of scanning being a reproduction of anything. The expression scanner and Scanning are given the meaning as follows:

Scanner (Telecom.). Mechanical arrangement for covering a solid angle in space, for the transmission or reception of signals, usually by parallel lines or scans.

Scanning (Radar). Coverage of a prescribed area by a directional radar antenna or scanner beam. (TV) Coverage of original or reproduced TV image, now generally by interlaced horizontal lines controlled electronically but originally by technically controlled disks, drums or mirrors (Comp.) The checking of recorded data (punched cards, letters, figures, etc.) by means of an electronic device.

It is clear that by the use of the expression scanner an idea of a reproducing machine does not at all follow. It transpires that a pamphlet containing the figure of the machine as well as its purpose had been sent to the authorities. A brief description of it is as follows:

PHISIFAX 457

for ten to ten thousand copies works with any duplicator.

PHISIFAX 457 up to-electronic Stencil Cutting extends your duplicating to a fast, efficient, versatile Decimle reproduction system. A System always ready to go into production. Cuts your cost practically. A System that bypasses bottlenecks and delays, time wasting typing, re-typing and checking. Puts go into office printing.

This also indicates that the machine could not be considered as a reproducing machine at all. A comparison made by the petitioner of the stencil cut by the machine under consideration with a block used in printing appears to be quite an appropriate one and just as a machine producing a block for printing cannot reasonably be said to be a reproducing machine, the machinery under consideration cannot also be said to be a reproducing machine. In my opinion, the Government of India had no material on record justifying interference with the order of the Appellate Collector.

20. Accordingly, the order (Exhibit "J") dated 20-3-1976 in W.P. 4295 of 1976 is hereby quashed restoring that of the Appellate Collector of Central Excise, Madras. The notice (Exhibit "R") dated 18-6-1976 which is impugned in W.P. 5317 of 1976 is also quashed and the respondent is prohibited from taking any further action on the basis of that notice. Parties shall however bear their own costs in these petitions.