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**(1981) 12 KL CK 0017**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 620 of 1979-F**

Calicut Refrigeration Co.

APPELLANT

Vs

Collector of Customs and Central Excise and Others

RESPONDENT

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**Date of Decision :** 14-12-1981

**Acts Referred:**

**Citation :** (1982) 10 ELT 106 : (1982) 1 ILR (Ker) 803

**Hon'ble Judges :** T. Kochu Thommen, J

**Bench :** Single Bench

**Advocate :** V.M. Nayanar, K. Kanakachandran and R. Krishnan Nair, for the Appellant; M.M. Abdul Aziz, for the Respondent

**Final Decision :** Allowed

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## Judgement

T. Kochu Thommen, J.—The question is whether Entry 29A of Schedule I to the Central Excises and Salt Act, 1944, is attracted in respect of an Ice Cream Combination Cooler sold by the petitioner. By Ext. P3, the Collector of Customs and Central Excise (the 1st respondent) found that Entry 29A was attracted and the petitioner was therefore, liable for the duty payable as per that Entry. This order was confirmed in appeal by the 2nd respondent, the Central Board of Excise and Customs, by Ext. P5, and later in revision by the 3rd respondent, Secretary to the Government of India, by Ext. P7. These orders are challenged in the present proceedings.

2. Entry 29 A reads as follows:

The question is whether an Ice Cream Combination Cooler was sold by the petitioner as a ready assembled unit. The facts alleged are stated in Ext. P3 :

"Shri C K Premkumar, Managing Partner of M/s. Calicut Refrigeration Company, Calicut, in his reply dated 16-4-1977 submitted that the "Ice Cream Combination Cooler" supplied to M/s. Indian Coffee House, Calicut was assembled at their premises (Indian Coffee House) out of the necessary components which were purchased locally and that frame work, cutting bending of the coils were only

done at their workshop. He had described the various parts of the same, pointing out that the motor, compressor and cooling condenser were all fitted on a base in the adjacent room whereas the main frame work was installed in the room at the entrance of the kitchen. Hence he has contended that the above said unit was not a ready made unit and therefore did not come within the Tariff description of Item 29A of the Central Excise Tariff. He requested that they should be absolved of the charges and the proceedings dropped. He desired to be heard in person before the undersigned."

These facts are not controverted. They show that the Cooler was assembled at the premises of the buyer out of necessary components purchased by the petitioner in the market. However the frame work and the cutting and bending of the coils were done by him at his workshop. What is manufactured by the petitioner therefore, are the non-essential components of the Cooler. The essential ones were purchased by him in the market. These parts were taken by him to the premises of the buyer and by means of carpentry and masonry work were put together and assembled as a Cooler. The parts were not assembled merely by tightening them with nuts and bolts, but they were installed by an elaborate process. There is no evidence to show how elaborate was the process of installation. But the fact that these parts had to be installed by means of masonry and carpentry work has not been controverted. From the facts admitted on both sides there can be no doubt that a process of installation is required to put the parts together in the form of a Cooler. In an identical matter concerning another assessee by name Topform Restaurant, Calicut the Appellate Collector of Central Excise, Madras, in his order dated 10-8-1979 (Ext P8) held that item 29A was not attracted in respect of an Ice Cream Combination Cooler. This is what the Appellate Collector says :

"From the above description of the tariff item, the main consideration for bringing an article under tariff item 29A(1) is whether the article is ordinarily sold or offered for sale as ready assembled unit. The product in question is no doubt a refrigerating unit, but I cannot consider this as one which is ordinarily sold or offered for sale as ready assembled unit. The Ice Cream Combination Cooler has been assembled from parts purchased from Bombay by the mechanic who is the Proprietor of M/s. Vinod Refrigeration, Calicut and the assembling has been done at the premises of the appellant. The words "ordinarily sold or offered for sale" as ready assembled unit would refer to these units which are very well known to the consumer and are available in the market for sale as ready assembled units. These words will not definitely refer to a unit of the type Ice Cream Combination Cooler assembled at the premises of the appellant according to the requirements of the appellant. I am sure no consumer will be able to purchase from the market the Ice Cream Combination Cooler of the design and type in question. Consequently, no duty is chargeable under item 29A(1) of the CE. Tariff as Refrigerator in respect of the Ice Cream Combination Cooler assembled at the premises of the appellant. The appeal is therefore allowed with consequential relief to the appellants."

In that proceeding the Appellate Authority clearly found that, in respect of a Cooler of the type in question here, there was no sale of a ready assembled unit as contemplated under Entry 29A. Such a Cooler is not ordinarily sold or offered for sale as a ready assembled unit.

3. The principle which governs facts of this nature is clearly and elaborately discussed, if I may say so with respect, by the Bombay High Court in *Blue Star Ltd. v. Union of India* 1980 ELT 280. In that case there was evidence that the installation of a Walk-in-Cooler was an elaborate process. Accordingly it was held that the sale of such a Cooler did not attract Entry 29A. As I stated earlier, there is no evidence in the present case as to how elaborate was the installation. If installation was as simple as putting the parts together by means of nuts and bolts and that the parts were brought to the premises as parts only for the purpose of easy transportation, such transaction would not avoid Entry 29A. On the other hand if the object of bringing the parts as parts to the premises was to instal and supply through such installation a Cooler which could not have been ordinarily and readily sold as a finished product, Entry 29A would not be attracted. Entry 29A has no application to anything other than what is ordinarily sold or offered for sale as a ready assembled unit. In Ext. P8 the Appellate Collector had categorically found that the installation of an Ice Cream Combination Cooler would not attract Entry 29A. This decision was not taken up in appeal by the Department. Although it is not *res judicata* in so far as the petitioner is concerned, it is a clear finding of fact in an identical situation by the Appellate Collector as regards the type of installation that is required for an Ice Cream Combination Cooler. The fact that this finding has not been challenged by the Department shows that the Department has accepted that finding as correct. Although I would have expected clear evidence on the point in the present case, I cannot brush aside or ignore the significance of the finding by the Appellate Collector in Ext. P8. I see no reason why that finding of fact should not be made use of to find out the nature of the installation that is required in the present case. In the absence of any evidence to the contrary and in the light of the facts not controverted by the Department I must accept the contention of the petitioner that the article in question does not come within the scope of Entry 29A.

4. Exts. P3, P5 and P7 do not show that the findings are reasonably based on evidence. The facts which have emerged beyond dispute bring the petitioner's case clearly within the principle stated by the Bombay High Court in the above said decision, which, with great respect, I adopt in the present case as well, Exts. P3, P5 and P7 are accordingly declared to be invalid and they are quashed. The O.P. is allowed in the above terms. No costs.