

(1989) 02 AHC CK 0052

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 491 of 1984

Chhibramau Cold Storage

APPELLANT

Vs

Customs Excise and Gold (Control) Appellate Tribunal and
Others

RESPONDENT

Date of Decision : 15-02-1989

Acts Referred:

Central Excise Rules, 1944 — Rule 8
Central Excises and Salt Act, 1944 — Section 3(3)
Constitution of India, 1950 — Article 226

Citation : (1989) 2 AWC 749

Hon'ble Judges : R.R. Misra, J

Bench : Single Bench

Advocate : B.N. Bhattacharya, for the Appellant; N.B. Singh, for the Respondent

Final Decision : Allowed

Judgement

R.R. Misra, J.—The Petitioners are the owners of a Cold Storage at Chhibramau, District Farrukhabad. On a visit dated 24-3-1976 the Central Excise Inspector found some RAC Machinery parts installed in the cold storage of the Petitioners. It was found that the Petitioners had got the same manufactured themselves by their ingenuity at site and installed the said machinery parts in their cold storage. Since the view taken by the Central Excise Inspector was that the said machinery parts were excisable under Entry 29-A of Schedule 1 of the Central Excise and Salt Act, 1944, he raised a demand of Rs. 43,219.21. Thereupon the Petitioners filed their objections which were rejected and the demand as proposed was confirmed. Appeals were filed by the Petitioners which too have been dismissed by both the appellate authorities below. Aggrieved, the Petitioners have now by means of this writ petition challenged the aforesaid levy of excise duty as well as appellate orders.

2. I have heard Sri B.N. Bhattacharya, Advocate appearing for the Petitioners. His first contention is that the Tribunal has, in the impugned order, refrained from

relying upon a decision of This Court rendered in the case of *Mother India Refrigeration Industries P. Ltd. v. Superintendent of Central Excise* 1980 ELT 600 which is in favour of the Assesses and has erroneously agreed with the view taken by the Gujarat High Court in the case of *Anil Ice Factory v. Union of India* 1984 15 ELT 333. The argument proceeds that the cause of action for levy of excise duty in the present case arose in Uttar Pradesh. Therefore, under Article 226 Sub-clause (2) of the Constitution of India, the Customs, Excise and Gold (Control) Appellate Tribunal was bound by the decision of This Court and it was not open to the said Tribunal to have agreed with the aforesaid view of the Gujarat High Court. To examine this contention, it is necessary to reproduce Sub-clause (2) of Article 226 of the Constitution of India. The same reads as follows:

(2) The power conferred by Clause (I) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within these territories." From a perusal of the above, it is clear that the said submission made by the Learned Counsel for the Petitioners is misconceived inasmuch as the above Sub-clause (2) of Article 226 refers to the exercise of power of the High Court to issue directions or writs to any authority or person by a High Court which exercises jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such powers, notwithstanding that the seat of such Government or authority is not within these territories This obviously refers to the High Court which can entertain a writ petition

3. In the present case, there is no dispute between the parties that this writ petition is cognizable by This Court and This Court has the necessary authority to issue any writ or direction to the Collector, Central Excise Kanpur and others if it finds that a case for the issue of a writ or direction is made out by the Petitioners. This Sub-clause (2) nowhere states that for a cause of action, wholly or in part, arising in Uttar Pradesh and in determination in regard thereto taking place outside Uttar Pradesh, as in the present case by the Customs and Excise Tribunal at Delhi, such a Tribunal is bound by the decision of the Allahabad High Court. Further, this is also not a case where the seat of the said Appellate Tribunal is situate within the territories of Uttar Pradesh so as to bind the said Tribunal by the decision of This Court. Thus, this contention advanced on behalf of the Petitioners by the Learned Counsel has no substance and is hereby rejected.

4. Second submission made by the Learned Counsel for the Petitioners is that, on the merits of this case, the ratio of the decision of This Court in the case of *Mother India Refrigeration Industries P. Ltd.* (supra) is applicable and therefore, the Tribunal is incorrect in law in relying upon a contrary decision of the Gujarat High Court in the case of *Anil Ice Factory* and another (supra). In the said case,

This Court has held that the central idea underlying Entry 29-A is that dutiable article must be an assembled unit which is ordinarily sold or offered for sale. If a person erects a unit with his own ingenuity, that is not liable to duty. It has also been held that Entry 29-A covers only such parts of refrigerating or air-conditioning appliances which are liable to duty, that is to say the part should be such as are ordinarily sold or offered for sale as ready assembled units. Therefore, it has been held by This Court that component parts erected at the site are outside the purview of Item 29-A as they are not: assembled units. No other submission was made or authority cited on behalf of the Petitioners.

5. Sri Shekhar Srivastava, Learned Counsel for the Union of India has, on the other hand, relied upon the said decision of the Gujarat High Court in the case of Anil Ice Factory and another (*supra*). In this case the Gujarat High Court has expressly disagreed with the aforesaid decision of This Court in the case of Mother India Refrigeration Industries P. Ltd. (*supra*) and has held that Sub-clause (3) of Entry 29-A which is in issue in the present case is an independent clause and has got nothing to do with the earlier Sub-clauses (1) and (2) for the purposes of interpretation. It has also been held that while interpreting Sub-clause (3) if reference is made to Sub-clauses (1) and (2), the Court will be virtually legislating and not interpreting the said entry.

6. In these circumstances, it has become imperative to refer to the Entry Tariff Item 29-A of the Central Excise and Salt Act 1944 which runs as follows:

Refrigerating and Air Conditioning Appliances--Refrigerating and Air Conditioning Appliances and Machinery, All sorts, and parts thereof:

(1) Refrigerator and other refrigerating appliances, which are ordinarily sold or offered for sale as ready assembled units, such as ice makers, bottle coolers, display cabinets and water coolers...75% ad valorem.

(2) Air Conditioners and other air-conditioning appliances, which are ordinarily sold or ordered for sale as ready assembled units, including package type air-conditioners and evaporative type of coolers...100% ad valorem.

(3) Parts of refrigerating and air-conditioning appliances and machinery, all sorts...125% ad valorem.

This entry finds place in the Schedule which is part of the Act. It cannot, therefore, be disputed that the same has got statutory force.

7. From a close reading of the above provision, it is apparent from the heading itself that what was sought to be excisable was all sorts of refrigerator and-air conditioning appliances and machinery and parts of the said appliances and machinery. Legislative intent appears to be that in item (1) of the above provision refrigerator and other refrigerating appliances which are ordinarily sold or offered for sale as ready assembled units were intended to be exposed to excise duty. This Sub-clause further exemplifies these types of appliances as ice makers, bottle coolers, display cabinets and water coolers. Under item (2) of the

above provision, we find a somewhat little different type of appliances i.e. Air Conditioners and other air-conditioning appliances, which are ordinarily sold or offered for sale as ready assembled units. From a reading of this Sub-clause it is apparent that the appliances included therein are of comprehensive amplitude so as to include package type air-conditioners and evaporative type of coolers. In the item (3) what is to be noticed is that parts of refrigerating and air conditioning appliances and machinery of all sorts i.e. all types of appliances and machinery which are mentioned in items (1) and (2) is mentioned but not assembled because all such appliances and machinery being assembled would fall within either of the two categories. Since legislature intended to levy duty on parts of the aforesaid refrigerating and air-conditioning appliances also, therefore, a necessary inference that has to be drawn is that such parts must take colour and be subjected to the conditions mentioned in items (1) and (2) above. To my mind, in other words only such parts of refrigerating and air-conditioning appliances and machinery are dutiable which also satisfy the test of being ordinarily sold or offered for sale. In case such parts are not sold or offered for sale but manufactured and utilised in a cold storage, as has been done in the present case, no duty is payable on the same. Besides, this word "thereof" occurring in the main heading is also an indication to this result.

8. In the case of *Collector of central Excise, Bombay v. Parle Experts (P) Ltd.* 1989 UPTC 173, one of the principles laid down by the Hon'ble Supreme Court for interpretation of a notification issued under Rule 8 of the Central Excise Rules has been held to be that the notification must be read as a whole in the context of the other relevant provisions. If this principle is borne in mind then what I have stated above in the immediately preceding paragraph according to the tradition of our law, primacy is to be given to the text in which the intention of the law giver has been expressed. In putting the said interpretation to the entry in dispute in the manner in which I have done, certainly This Court is not legislating nor it is the function of the Court to legislate also. But no such interpretation can be put as it is either devoid of or is torn of its context. Having regard to the above context in which the entry in dispute finds place, in my opinion, the said entry does and has to take colour from Sub-clauses (1) and (2) of the said entry. Sub-clause (3) of the said entry cannot, in my opinion, be disassociated in any manner and be read separately from Sub-clauses (1) and (2) of the said entry. Thus Clause (3) of the said entry cannot be read in isolation as it is integrately connected with parts of such machineries as are referred to under Items (1) and (2) of the said entry. In view of what I have demonstrated above and having regard to the principle that the said entry has to be read as a whole and the language used in the entry right up from its heading till last, it would be in consonance with the spirit and the reason of law to hold that only such parts of refrigerator and air-conditioning appliances are machineries as are ordinarily sold or offered for sale attracted duty under Sub-clause (3) of the said entry and not otherwise. This conclusion of mine also finds support for a variety of other reasons which I will hereinafter refer.

9. On a dispute being raised with regard to the interpretation of item No. (3) above, the Central Board of Excise and Customs had itself issued a clarificatory tariff ruling, taking the same view as I have stated above and a mention of the same also finds place in paragraph 8 of the said judgment of This Court in *Mother India Refrigerating Industries P. Ltd.*.

10. To interpret the entry in dispute, aid may also be taken from the principle of *ejusdem generis*. This rule applies when the following conditions exist:

- (a) The statute contains an enumeration of specific words;
- (b) The subjects of enumeration constitute a class or category;
- (c) That class or category is not exhausted by the enumeration;
- (d) The general term follows the enumeration; and
- (e) There is no indication of a different legislative intent.

11. In the present case I find that this rule applies on the said basis. Therefore, it has to be concluded that the entry in dispute is not independent as has been held by the Gujarat High Court in the case of *Anil Ice Factory* and another (*supra*) but follows the specifications of the various types of appliances and machineries which have been enumerated in Sub-clauses (1) and (2). The intention of the legislature appears to be to levy duty on parts of such machineries only and not otherwise.

12. The aforesaid Tariff Entry No. 29-A has also been interpreted by the Bombay High Court in the case of *Blue Star Ltd. Vs. Union of India* and another, In this case the Petitioner-Company carried on business, inter alia, of manufacturing Walk-in-Coolers which are used for preservation of food, medicines and other perishable articles. These Walk-in-Coolers comprised of various component parts such as cooling coils, blower matters, condensing units, controls, condensers, thermostat, ever-lead protection thermal relay and panels. In addition, Walk-in-Coolers ancillary equipments such as ducting, copper tubing, wiring and piping are also necessitated. None of the parts of the Walk-in-Coolers can work independently as a cooling machine unless all these parts are installed and assembled together. The distance between Walk-in-Coolers and condensing units varies according to the requirements and specifications of such individual customer, the variation being as much as 50 feet or more. The question arose whether these Walk in-Coolers are liable to excise duty. It was held the said Walk-in-Coolers were not ready assembled units and that although major components and parts might be brought from the market directly to the site where erection and installation work is done and where for the first time the assembled belt is put in a running condition but such Walk-in-Coolers being not a ready assembled unit, no duty is attracted on the same under Tariff Item No. 29-A of the Central Excise Tariff.

13. This Item No. 29-A of the Central Excise Tariff also came up for consideration

before the Kerala High Court in the case of Calicut Refrigeration Co. v. Collector of Customs and Central Excise Cochin 1982 ELT 106. In this case the Assessee had assembled ice cream combination cooler at the premises of the buyer out of necessary components purchased by the Petitioner in the market. It was held that Item 29-A of the Central Excise Tariff has no application to anything other than what is ordinarily sold or offered for sale as a ready assembled unit.

14. Proceeding further, I find that the Gujarat High Court itself has in the case of Vaidlal Ice and Cold Storage Co. Ahmedabad v. Union of India SCA No. 1504 of 1970 decided by the Gujarat High Court on 23-8-1972 held that simply because pipes of a particular size have been arranged in a particular manner so to as carry cooling gas, it cannot be said that they could form a condenser or a bring cooler. Such products are not saleable as condenser cooling coil or bring cooler nor are such understood to be so by the people in the trade or commercial world. Therefore, such parts are not liable to duty under item 29A(3) of the Tariff. A reference to this case finds place in the 5th Re Print Edition of Central Excise Law Guide by R.K. Jain at page 415 and also in the decision of the Central Excise Tribunal in the case of 1984 ECR 1874 15. From the above, it is also apparent that at any rate two views are possible for the interpretation of the disputed entry occurring under Item 29A. It is settled that in such a situation the interpretation in favour of the subject has got to be done by the Court. Hence also in the present case no excise duty is attracted.

16. Further Sub-section (3) of Section 3 of the Central Excise and Salt Act, 1944 which came into effect from the 1st of July 1978 and though not enacted and not enforced at the time when the dispute arose, yet it is a pointer to the interpretation to be put for excisable items. The said Sub-clause (3) reads as follows:

(3) Different tariff values may be fixed:

(a) For different classes or descriptions of the same excisable goods; or

(b) For excisable goods of the same class or description--

(i) Produced or manufactured by different classes of producers or manufacturers; or

(ii) Sold to different classes of buyers;

Provided that in fixing different tariff values in respect of excisable goods falling under Sub-clause (i) or Sub-clause (ii), regard shall be had to the sale prices charged by the different classes of producers or manufacturers or, as the case may be, the normal practice of the wholesale trade in such goods.

17. Undisputably, Section 3 of the aforesaid Act is the charging section for excise duty and different tariff values are fixed. For doing so regard has to be had to the sale prices charged by different cases of producers or manufacturers. Therefore, I find that to attract excise duty the disputed parts in question must have a

market value which is wholly absent in the present case.

18. Lastly, I find that sitting singly I am also bound by the aforesaid decision rendered by Division Bench of This Court in the case of Mother India Refrigeration Industries P. Ltd. (supra). I also, with profound respect and for the reason stated above, find my self unable to agree with the reasoning contained in the decision of the Gujarat High Court in the case of Anil Ice Factory and another (supra). Thus it has to be held that the Petitioners are not liable to pay any excise duty on the items in dispute.

19. In the result, the writ petition succeeds and is allowed with costs. The impugned orders passed by both the authorities below levying excise duty on the Petitioners or the aforesaid parts of appliances and machinery are hereby quashed.