

(1991) 02 MAD CK 0052

In the Madras High Court

Case No : Writ Appeal No's. 847 of 1988 and 48 of 58 of 1989

Collector of Central Excise

APPELLANT

Vs

Alco Industries

RESPONDENT

Date of Decision : 07-02-1991

Acts Referred:

Citation : (1993) 42 ECC 85 : (1993) ECR 584 : (1991) 55 ELT 184 : (1991) 2 MLJ 287

Hon'ble Judges : Raju, J;A.S. Anand, J

Bench : Division Bench

Advocate : Shri K. Jayachandran, ACGSC, for the Appellant; Shri A.S. Kailasam and Shri S. Balasubramanian, for the Respondent

Judgement

Raju, J.—The above writ appeals have been filed against the common order dated 26-8-1987 of the learned single Judge made in a batch

of writ petitions disposed of together having regard to the fact that they involve a common question as to whether ""wet grinder"" manufactured and

sold is eligible to excise duty under Excise Tariff Item 33-C of the Central Excise Tariff in the First Schedule to the Central Excises and Salt Act,

1944. Having regard to the nature of the issue involved before us, they are dealt with in common by us.

2. The basis and relevant facts necessary for our purpose are beyond controversy. The respondents herein who were the writ petitioners

manufacture and sell what is commercially known and called as ""wet grinders"". The goods sold are complete units after assembling in the

respective factory of the manufacturers and that the invoices are raised separately for motor portion and for grinder portion and that what is

manufactured is really the grinder portion and the electric motors purchased

from outside from its manufacturers are attached and fixed with the grinder. The grinders as such have no electrical connection for operation by receiving electrical energy. But on the other hand the motor is placed along with and provided with pulleys for relating the grinder by means of v-belts. Thus so far as the manufacturers in question are concerned, what they really do is they manufacture the grinder and purchase the electric motors separately from another manufacturer and virtually fit up the electric motor to the steel frame of the wet grinder in the space allotted for the same and connect the wheel base of the grinder with that of the motor by using a v-belt.

3. Excise Tariff Item 33-C which was introduced by the Finance Act No. 14 of 1969 with effect from 1-3-1969 reads as follows :-

(The First Schedule)

Item No. Description of goods. Rate of duty

33C Domestic Electrical Appliances, not Thirty percent.

elsewhere specified. ad valorem

Explanation I :- "Domestic electrical appliances means electrical appliances normally used in the household and similar appliances used in hotels, restaurants, hostels, offices, educational institutions, hospitals, train kitchens, aircraft or ships" pantries, canteens, tailoring establishments, laundry shops and hair dressing saloons.

Explanation II :- Interchangeable parts or auxiliary devices accompanying an appliance to make it suitable for various purposes shall be assessed to duty along with the appliance.

When the authorities of the Department called upon the various manufacturers of wet grinders to take out a licence under the Central Excises and Salt Act, they protested and made representations through the manufacturer-

Association to which they were informed by the authorities that domestic grinders will not fall within the scope of Excise Tariff Item 33-C. Notwithstanding this stand taken at one stage, the Department officials at a later point of time sought to make out that domestic grinders will fall within the scope of Tariff 33-C through the issue of trade notices. It appears that when again representations were made by the manufacturers as well as traders, the Government of India, Ministry of Finance, Central Board of Excise and Customs, New Delhi by their circular dated 12-6-1975 made it known that wet grinders driven by the external motor system would fall outside the scope of Item 33-C of the Central Excise Tariff. Notwithstanding this, again another circular trade notice challenged in the writ petitions in question came to be issued declaring that wet grinders marketed without any electric motor will fall under Tariff Item 68 and if the same is marketed with electric motor they will fall under Tariff Item 33-C. It is in those circumstances, the various writ petitions came to be filed before this Court.

4. Before the learned single Judge, what was urged on behalf of the various writ petitioners was that the wet grinders in question manufactured and sold by them will not fall under Item 33-C of the Central Excise Tariff, inasmuch as they did not have in built motors for instant operations of the system itself and the grinders are operated by v-belt mechanism and only through external motors. It was also contended before the learned single judge that on an identical issue the Gujarat High Court in the decisions reported in Balakrishna Rechhodlal Shah and others v. Assistant Collector of Central Excise, Ahmedabad and others (1979) (4) Excise Law Times 377 and Punit Ghar Ganti Vs. Union of India and Another, held that wet grinders will not fall under Item 33-C and the Central Excise Law being a Central enactment must be enforced uniformly throughout the country and the contrary view or stand taken by the Central Excise Authorities in Tamil Nadu cannot be countenanced. Reliance was also placed on the fact that the Special Leave a Petition filed by the Department against the judgment of the Division Bench of the Gujarat High Court was rejected in limine by the Supreme Court of India and leave to appeal was refused. It was further contended that when the conclusion reached by the Collector of Central Excise in a Conference was accepted by the Central Board of excise

and Customs and the Central Government issued appropriate instructions that the manufacture and sale of wet grinders will not fall under Item 33-C of the Central Excise Tariff, it was not open to the Department to go back on the same or vary their conclusions except for sufficient and cogent reasons based on fresh facts such as subsequent judicial pronouncements and that the authorities cannot depart from their earlier stand as and when they like.

5. On behalf of the appellants, a preliminary objection was raised before the learned single Judge contending that the writ petitions are premature and not maintainable against the trade notices and that as the matter involved question of fact which cannot be satisfactorily decided in a writ proceedings, the question must be left to be decided by appropriate authorities functioning under the Act. It was also contended on their behalf that wet grinders are commonly known and used only as electrical appliances and not otherwise and that when the writ petitioners completed the process by fitting the electric motor with the wet grinder, a manufacturing process takes place as a result of which, according to the Department, a commercially new product emerges rendering the manufacturers thereby liable to duty in respect of wet grinders manufactured and sold by them under Item 33-C of the Central Excise Tariff.

6. After considering the respective submission of the learned counsel on either side with the relevant materials produced, the learned single Judge came to the conclusion that wet grinders in question fall outside the scope of Item 33-C of the Central Excise Tariff. The plea raised questioning the maintainability was also rejected. The learned Judge further held, following the decision of a Division Bench of the Delhi High Court in *J. K. Synthetics Ltd. and another Vs. Union of India and others*, , that the reasons assigned by the Department do not satisfy the criteria laid down by the Delhi High Court justifying the change of view. On the said view, the learned Judge declared that there is no need or necessity to formally quash the impugned trade notices inasmuch as the declaration made by him will be binding on the assessing authorities. Only in so far as W.P. No. 596 of 1981 is concerned against which W.A. No. 847 of 1988 has been filed before us, the adjudication order which was the subject matter of challenge was set aside. In respect of other writ petitions, they were dismissed

on the simple ground that no formal rule absolute need be issued to quash the trade notices for the reason referred to above. Aggrieved, the Department has filed the above appeals.

7. Mr. K. Jayachandran, learned Additional Central Government Standing Counsel appearing on behalf of the appellants reiterated the submissions

made before the learned single Judge and contended that the wet grinder manufactured and sold by the respondents is a domestic electrical

appliance falling within Item 33-C of the Central Excise Tariff and that the learned Judge erred in placing reliance upon the decisions of the Gujarat

High Court and the view expressed in some of the earlier circulars. According to the learned counsel, it may not be correct to consider that only

grinder as having in built motors will fall under the Tariff Item in question and the grinders operated by motors with v-belt mechanism will not fall

thereunder.

8. Mr. A. S. Kailasam and Mr. S. Balasubramanian, learned counsel appearing on behalf of the respondents reiterated before us the reasoning of

the learned single Judge based upon the decisions of Gujarat High Court and contended that the order of the learned Judge does not call for any

interference in our hands.

9. We have been taken at length by the learned counsel appearing on either side through the two decisions of the Gujarat High Court referred to

supra and we are of the view that no exception could be taken to either the correctness of the ratio laid down therein or the conclusions of the

learned single Judge to apply the said ratio to the case on hand in favor of the manufacturers. The Learned single judge extensively quoted the ratio

of the decision of the Division Bench of the Gujarat High Court which makes it unnecessary for us to refer to them in detail once again in this

judgment. Suffice it to refer to the fact that the very same High Court in Shri Punit Ghar Ganti's case (supra) followed the earlier Division Bench

judgment and pointed out that it is the electric element or motor or rotor or starter which gives the specific character to the goods of the description

as electric appliance and unless electric part is fitted into it by which the said appliance works, the rest of the assemblage would be only a domestic

appliance which could not fall within the specific Tariff Item of electrical appliances, but would be in any other kind of power driven domestic

grinder.

10. It is a well-known principle of construction in interpreting the tariff item or taxable entry that scientific, technical or dictionary meaning should

not be mechanically adopted and such words used therein have to be construed in their own context and in the sense as ordinarily understood by

the people usually conversant and dealing in such goods. Having regard to the Tariff Item under consideration before us, it required to be

considered as to what is an electrical appliance. In a decision reported in *State of Gujarat v. Sukan Industries* (1979) 43 S.T.C. 344, another

Division Bench of the Gujarat High Court which spoke through Justice P. D. Desai as he then was, had an occasion construe entry 92 of Schedule

II-Part A to the Gujarat Sales Tax Act, 1969 which used the term "'domestic electrical appliance'" and the learned Judges held, while applying the

ratio of the earlier Division Bench Judgment reported in *Balkrishna Rechhodlal Shah and Others Vs. Assistant Collector of Central Excise and*

Others, that "'domestic appliance'" in order that it can be properly called a "domestic electrical appliance" must have as its in-built device an

electrical contrivance which would make it a complete unit fit to render the designed service and that a domestic appliance which is merely an

assemblage of various component parts minus that contrivance which gives to it the electric motive power would not be domestic electric appliance

properly so-called.

11. In *Deputy Commissioner v. Equipment Agencies* (1981) 47 S.T.C. 68, a Division Bench of the Kerala High Court had an occasion to

consider the scope of the expression "electrical goods" in entry 26 of the First Schedule to the Kerala General Sales Tax Act, 1963 and it was

held therein that going by its ordinary connotation as also its meaning as understood in commercial parlance it will take within its scope only

appliances which are exclusively dependent upon the use of electrical energy for their working, and which cannot be put to any use except in

relation to the utilisation of electrical energy. It was also considered necessary that intrinsically the goods in question must be susceptible of being

classified as electrical goods in the sense that they by their very nature answer the said description. In coming to such a conclusion and holding that

pumpsets, grinders, air-compressors, lathes etc. sold by the assessee therein

cannot be said to be either goods which intrinsically fit in with the description of electrical goods or that they can be put to use only by use of electrical energy, the Division Bench placed reliance upon, among other things, the decision of a Division Bench of this Court reported in *William Jacks and Co. Ltd. v. State of Madras* (1960) 11 S.T.C. 340.

12. Again, a Division Bench of this Court had an occasion to construe the very expression while interpreting entry 41 of the I Schedule, at the relevant time, of the Tamil Nadu General Sales Tax Act, 1959 and it was held therein that unless "intrinsically the goods are electrical goods, the mere fact that an article cannot be used without electricity cannot be considered to be a decisive test. The said Division Bench referred to and relied upon the two earlier Division Bench Judgments of this Court. Of the two decisions, one was the case in *William Jacks and Co. Ltd.* case (supra) wherein it was held that a lathe, even though driven by an electrical energy, will not come within the scope of the expression "electrical goods".

13. In the light of the various pronouncements referred to supra, we are of the view that in order to bring an article or commodity within the meaning of Tariff Item 33-C and within the meaning of the expression "domestic electrical appliance", it is necessary that electrical appliances should be in-built in the commodity concerned. An electrical appliance is not the same as electrically operated machinery and all electrically operated machineries cannot be said to answer the description of electrical appliances. The presence of an electric motor in an apparatus or machinery notwithstanding that electric motor formed a distinct, severable and separate unit, cannot have the effect of rendering the machinery or apparatus an electrical appliance merely because the said motor also was fixed as a distinct component of wet grinder, connected by a v-belt.

14. We are of the view that having regard to the fact that indisputably the manufacturer of wet grinder and the trade have purchased electric motors from third parties and thereafter fitted the latter into the steel frame of the wet grinder and connected the motor with the wet grinder by belt, the article in question cannot be treated to be an electrical appliance which is an essential pre-requisite to make it fall within Item 33-C of the Central Excise Tariff in addition to the same being a domestic appliance. Though

excise duty is levied on the incidence of manufacture or production and removal of the goods for consumption, there is no need so far as the case on hand is concerned to detain ourselves to dwell in detail the aspect as to the nature of the process involved in fitting the electric motor to the steel frame of the wet grinder in the space allotted for the same, inasmuch as prima facie we consider that by mere process of assembling the electric motor in the already existing grinder no commercially new product as such emerges by any manufacturing process. That apart, we are also concerned more about the identity of the commodity as to whether it answers the description of the domestic electrical appliance which we have answered in the negative already.

15. For all the above reasons, we are not persuaded in any manner to come to a different conclusion than the one arrived at by the learned single

Judge and we find no justification to take a view contra. The plea of the appellants, therefore, merits only rejection, at our hands.

16. The plea raised on behalf of the appellants regarding the maintainability of the writ petitions have been rightly repelled by the learned single

Judge and we are not convinced of the submissions made by the learned counsel for the appellants on this aspect either. In the light of our

conclusions as above, we consider it unnecessary to go into the question based on the legality or otherwise of the competency of the authorities to

change their view and whether there are sufficient grounds for such a change in the circumstances of the case. The writ appeals, therefore, fail and

shall stand dismissed; but in the circumstances, there will be no order as to costs.