(1993) 07 SC CK 0006

In the Supreme Court Of India

Case No : Civil Appeals No''s. 3005-3007 of 1991

Collector of Central Excise APPELLANT

Vs

M/s. Fusebase Eltoto Ltd. RESPONDENT

Date of Decision : 20-07-1993

Acts Referred:

Citation : AIR 1994 SC 1289 : (1993) 48 ECR 2 : (1993) 67 ELT 30 : (1993) 4 JT 280 : (1993) 3 SCALE 212 : (1993) 3 SCC 385 Supp : (1993) 1 SCR 315 Supp

Hon'ble Judges : P.B. Sawant, J;Kuldip Singh, J

Bench : Division Bench

Advocate : Kailash Vasudev, D.S. Merhra and P. Parmeswaran, for the Appellant; V. Lakshmi Kumaran, A.S. Madan Rajesh Mehta and V. Balachandran, for the Respondent

Final Decision : Allowed

Judgement

Kuldip Singh, J.—The question for consideration is whether "Projection Television sets" manufactured by the respondent are the same as the "Broadcast Television receiver sets" for the purpose of earning exemption under the central excise laws. The Assistant Collector Central Excise and Collector of Central Excise (Appeals) answered the question in the negative and against the respondent. On further appeal by the respondent, the Customs, Excise & Gold (Control) Appellate Tribunal (the Tribunal) reversed the findings of the authorities below by its order dated March 5, 1990 and came to the conclusion that the "Projection Television Sets" are the same as "Broadcast Television receiver sets" and as such the respondent was entitled to the exemption claimed. This appeal by the Central Excise Department through the Collector of Central Excise Meerut is against the order of the Tribunal.

2. The projection Television sets manufactured by the respondent-company are sold under the brand names Hotline Project vision 203, Hotline Project vision 303, Hotline Project vision 503, Hotline Project vision 222. A single set consists of a "projection-unit" and a screen. Different models have screens of different

sizes. The screen size for the model Hotline Project vision 203 is 200 CM (79"), for Hotline Project vision 303, the screen size is 300 Cm (119") etc. The projection-unit, which is placed at a distance from the screen, is designed to produce images upto 65 times the size of a conventional television. These sets are sold to video parlours, cinema halls, universities and other institutions for catering to a large audience. According to the respondent the Project vision is designed to accommodate various inputs such as video cassette recorders, personal computer/IBM Doordarshan signals, video Camera, Video disc-player and others.

3. The excisable goods specified in Notification No. 68/86 dated February 10, 1986 are exempt from payment of Central Excise duty in terms of the said notification. Serial No.19 in the said notification is as under:

"19. 85.28 Broadcast television receiver sets (other than monochrome sets) of screen size exceeding 36 centimeters" Rupees 900 per set

Notification No. 160/ 86 dated March 1,1986 contains the following entry at Serial No. 10 :

"10. 85.28 (i) television sets in combination with, video recording or reproducing apparatus Twenty-five per cent ad valorem

(ii) Video monitors and Video projectors Twenty-five per cent ad valorem"

4. The claim of respondent for grant of exemption under Notification No. 68/86 was rejected by the Assistant Collector and the Appellate Col lector on the ground that the respondent was manufacturing "Video projectors" and as such they were liable to pay central excise duty in terms of the Notification No. 160/86. In substance the Department's case was that the goods manufactured by the respondent did not come within the category known as "broadcast television receiver sets".

5. According to the Assistant Collector inbuilt-technology of the projector television receiver set is different than that of a broadcast television receiver set. It was highlighted that the projection set has three cathode rays tubes whereas the ordinary set consists of only one such tube. The cathode - rays tubes used in both types of sets are entirely different in their shape, size and function. The Assistant Collector primarily decided against the respondent company on the ground that the 'projection television set' is not known as 'broadcast television receiver set' in common parlance of the trade. He accepted the contention of the respondent that the projection television is a television receiver in the sense that it receives the video signals and the images of distant events and objects but he rejected the contentions of the respondents on the following reasoning: -

But its function is not confined to receiving the images and making them visible on the receiver set itself. It extends to their projection outside the receiver set. A careful reading of the notification No. 68/86 would reveal that only a receiver set (as against a projector set) is entitled for concessional rate of duty within the ambit of its meaning. There should, therefore, be no doubt that a television set which functions both as receiver and projector is not covered by the notification No.68/86 as Amended.

I find that the distinguishing feature between a television receiver set and the so called projection television (being manufactured by M/s. Fuse base and which is the subject matter of present dispute) outlined in the show cause notice relate to facts which have not been disputed by the party. It is beyond dispute that both in terms of function and configuration the so called projection TV is different from a TV as understood in Common parlance of trade. It is settled law that for the purpose of levy of Central Excise duty, the most important consideration/factor is how it is known in market and society. Both in terms of price as also in terms of its response to the market/society, the so called projection TV is not considered and known as a television. In so far as this product (projection TV) projects the images received by it on a medium/screen outside - about which there is no doubt and dispute - It is appropriate to call it a Video projector.

6. The Collector (Appeals) upheld the above quoted findings of the Assistant Collector. The Tribunal did not touch the question as to how the product called "broadcast television receiver set" is identified by the class or section of people dealing with or using the product. That is the test to be followed when the relevant notifications do not contain any definition of the products. The identity of an article is associated with its primary function and utility. The names of certain products have functional association in the mind of the consumers. There is a mental association in the mind of the consumer in respect of certain products keeping in view the utility of the product and also the reputation the name of the product has acquired in the market and among the consumers. "Broadcast television receiver sets" and the "projection television sets" are two entirely different products and the consumers in this country, as at present, do not identify these two as one and the same product. When you go to the market to buy a 'television set' you mean the conventional 'Broadcast Television Receiver set' and the dealer will never understand you to mean the 'Hotline Projector Vision 302 etc.'

7. We agree with the contention of the learned Counsel for the respondent that the Projector Vision-Projection television sets are capable of receiving television broadcasts as is being done by any other broadcast television receiver set but at the same time the two are not the same. An ordinary television set has a fixed image in the mind of the consumer in this country. One never visualises a television set having a projection-unit and a head-screen mounted at a long distance. A television set - in the imagination of the consumer - is a compact set with inbuilt screen which adores the drawing room and bed room. A television set in the market costs about Rs. 15,000 to Rs. 25,000 whereas the respondents product costs between Rs. 1,20,000 to Rs. 1,50,000. We, therefore, agree with the view taken by the Assistant Collector and the Collector.

8. We, further, agree with the Assistant Collector that the product of the

respondent fully answers the description of "Video Projectors" in terms of the Notification No.160/86. It is not disputed, rather it is the case of the respondent that the "projection television set" manufactured by them receives the televised image. 'Video' is the transmission and reception of a televised image. In other words, its is a television image or the electric signals corresponding to it. It pertains to the picture portion of the televised programme. 'Projector' is a device for projecting a light beam, an apparatus for throwing illuminated images or motion pictures on the screen. The product of the respondent-company projects on a screen the video signals transmitted from the television station and received by it. The Assistant Collector has, thus, rightly reached the conclusion that the product of the respondent answers the description of a 'video projector'.

9. We, therefore, allow the appeals and set aside the impugned order of the Tribunal dated March 5, 1990. As a consequence we dismiss the appeal of the respondent before the Tribunal. The respondent shall pay the costs of the litigation which we quantify as Rs. 11,000.