

(1986) 10 KL CK 0021
In the High Court Of Kerala
Case No : W.A. No. 187 of 1982

Collector of Customs and Central Excise	APPELLANT
Vs	
Calicut Refrigeration Company	RESPONDENT

Date of Decision : 07-10-1986

Acts Referred:

Citation : (1986) 10 ECC 383 : (1986) 9 ECR 547 : (1987) 32 ELT 367 : (1987) 1 ILR (Ker) 686

Hon'ble Judges : V.S. Malimath, C.J;V. Bhaskaran Nambiar, J

Bench : Division Bench

Advocate : P.V. Madhavan Nambiar, for the Appellant; V.M. Nayanar, for the Respondent

Final Decision : Dismissed

Judgement

V. Bhaskaran Nambiar, J.—Whether "Ice Cream Combination Cooler", a composite unit assembled by the writ petitioner in the customer's premises. "The Indian Coffee House" at Calicut attracts Excise duty under Tariff Item 29A of the Central Excises and Salt Act, is the question that arises for consideration in this writ appeal.

2. The writ petitioner installed, an Ice Cream, Combination Cooler in the premises of the Indian Coffee House at Calicut in 1976, according to the requirements and specifications of the coffee house. The component parts of the unit, including the condenser, thermostat valve, electric motor, stainless steel churner, cooling cans, etc. assessed to Excise duty and sales tax separately, were purchased from outside. They were transported to the coffee house, built with masonry and fixed, after putting up iron tanks, in two separate but adjacent rooms and connected together by copper tubings. It was thus a composite unit requiring both skill and labour, originality and imagination. This will be evident and obvious from the quotation and the invoice (Exts. R-1 and R-3) produced by the Department in this Court. The writ petitioner gave a warranty for the cooler for a period of two years against manufacturing defects and a one year warranty

for the electric motor from the date of installation. It was also specified that the "installation" will be done free of charge, "excluding masonry, carpentry works and electrical wiring". The full payment is to be made after installation.

3. The Department assessed this unit applying Tariff Item 29A of the Central Act,

4. This was confirmed in appeal and by the Government in revision. The Government reasoned thus :-

Government observe from facts on record that the unit in question was assembled out of parts purchased from the open market and those manufactured by the petitioner-firm. The unit being of an open type, the motor, compressor, etc. are placed separately for the sake of convenience only and this does not make the unit as one distinct from a ready assembled unit. Government further observe whether such appliances are manufactured at the factory premises or assembled in site out of parts manufactured by the petitioners, they are liable to duty under sub-item (1) of Item 29A of the Central Excise Tariff as the same has been sold as a "Combination Cooler". The unit in question is capable of being sold as such and when assembled it serves the same purpose as any other appliances of similar type which are sold in a ready assembled form. Further, the Appellate authority has quoted the tariff description and discussed the question as to whether the "Combination Cooler" is, a refrigerating appliance after considering the evidence on record and also the utility and purpose of the unit and holding it as correctly classifiable under Tariff Item 29A(1). Government is in full agreement with his finding of the Board.

5. These orders were challenged in a writ petition before a learned Single Judge of this Court. In the counter affidavit filed by the Department, it was stated thus :-

It cannot conceivably be disputed that the Ice Cream Combination Cooler when assembled is a refrigerating appliance. The fact that portions of the composite unit are for convenience assembled in one room and the other portions are assembled in a different room does not affect the question. The unit is a composite one and the sale by the petitioner to M/s. Indian Coffee House was of the assembled unit.

It is submitted that the petitioner and other similar persons in the business gave quotations for the supply of the composite units to be assembled and delivered in the premises of the customer and a composite sale price is charged for the same. This is the practice of the trade.

The unit in question at the time of the delivery to the customer was a ready assembled unit. In other words, the petitioner had agreed to sell the ready assembled unit. The delivery became complete only when it was assembled in the premises of the customer and the warranty was given. All the relevant aspects have been taken into account by the statutory authorities.

6. The learned Judge set aside all the three orders holding thus :-

...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 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 articles in question does not come within the scope of Entry 29A.

7. Aggrieved, the Department has filed this appeal.

8. Tariff Item 29A of the Central Excises and Salt Act, reads thus :-

9. In an identical case, arising from the same area the Collector of Central Excise, Madras, passed an order on 10th August, 1979 in which it was held that the item was not chargeable to duty under this entry. It was said thus in that order :-

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 29(A)(1) of the Central Excise Tariff as Refrigerator in respect of the Ice Cream Combination Cooler assembled at the premises of the appellant.

10. There are two decisions of Bombay and Allahabad High Courts favourable to the assessee. In *Blue Star Ltd. v. Union of India and Anr.* -1980 ELT 280 (Bom.), the Bombay High Court was considering whether a Walk-in-Cooler manufactured and erected and installed at the site of the customers were not ordinarily sole or offered for sale attracting Entry 29A of the Central Act. It was held thus :-

It is true that what the customer ultimately got was a complete refrigerating appliance and to that extent Mr. Shah is correct. But it is not what the customer ultimately got that must be taken into account in ascertaining whether the case of the petitioner-company fails within the ambit of Tariff Item No. 29A (1), I again emphasise that what the customer ultimately got at the site was a plant

which was tested and put into working order not at the petitioner's factory but at the site after most of the parts and components required to put the assembled whole in a running condition were brought by the petitioner from the market directly to the site where they were installed by a laborious and time consuming process according to the individual requirements and specifications of each individual customer of the petitioner-company. Applying that test, it cannot be said that what the petitioner-company ordinarily sold or offered for sale was a ready assembled units so as to attract the duty under Tariff Item No. 29A (1).

11. In *Mother India Refrigeration Industries P. Ltd. v. Superintendent of Central Excise and Ors.* - 1980 ELT 600 (All.), the Allahabad High Court held thus :-

If a person erects a refrigerating plant from his own indigenous efforts and creates a refrigerating machinery or refrigerating unit, it will not be within the entry and hence will not be liable to duty because the duty is leviable only on such of the mentioned appliances as are ready assembled units and are sold and offered for sale as such.

* * *

Air-conditioning plants, Cold storage plants and ice-making plants, etc. consist of series of machines and other equipment which are situated at different places and connected with each other to form the complete equipment. Such plant may be sold completely but are not ordinarily sold or offered for sale as ready assembled units. These are erected at site and many of the equipments would have to be tailored to individual requirements. Such plants would not, therefore be classified under sub-items (1) and (2) of Item 29A of the Central Excise Tariff. Further the aforesaid interpretation of the tariff items was not considered and if refrigerating and air-conditioning plants are also taken as covered by the sub-items (1) and (2), then the expression "which are ordinarily sold or offered for sale as ready assembled units" occurring in the sub-item would be redundant. This, therefore, would not be a proper interpretation.

12. The Court also took note of the similar supporting stand of the Board of Revenue and stated thus :

The Board accordingly considered that complete refrigerating and air-conditioning plants which are not ordinarily sold as ready assembled units but have to be erected as site would or outside the purview of Item 29A and that no countervailing duty would be leviable on them.

This is accord with the interpretation that has appealed to us that the central idea underlying Entry 29A is that the 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 is further clear that component parts erected at the site are equally outside the purview of Entry-29A as they are not assembled units. It is thus clear that erection of a complete plant at the site is outside the purview of sub-entries (1), (2) as well as (3).

13. It is also pertinent to note that the writ petitioner had specifically pleaded before the Departmental Authority thus :

These are usually assembled in the premises according to the requirements of the parties and space available in the place provided. Hence this cannot be offered as a readymade assembled unit.

14. We are of the view that Tariff Entry 29A of the Central Excises and Salt Act, 1944 is attracted only when refrigerators and other refrigerating appliances are ordinarily sold or offered for sale as ready assembled units. A refrigerating appliance is not ordinarily sold or offered for sale when it is made, moulded, erected and installed according to specifications and requirements of any particular customer. When a refrigerating appliance is a complete self contained unit only after all the component parts are assembled, located, fitted and fixed according to the customer's plan and purpose, it cannot be said that this unit is ordinarily sold or offered for sale, for then, it is sold for a particular purpose in special circumstances. The mere fact that just before the sale, the units are assembled, does not automatically attract the tariff entry, for, still the condition that it is ordinarily sold or offered for sale has to be satisfied. When the sale of an assembled unit takes place, only when it is erected or installed in the premises of the customer, it can safely be inferred that the appliance is not normally, usually, ordinarily sold or offered for sale. The unit is identifiable as a complete self contained unit only after assembling and installation and not before.

15. We are in respectful agreement with the views expressed by the Bombay and Allahabad High Courts and do not agree with the Central Government counsel that on facts, those cases are distinguishable.

16. It is equally important to note that the Board of Revenue had itself expressed its view, once, in favour of such assessees as was noticed by the Allahabad High Court. Another authority has also taken a similar view in an identical case arising from the same area Calicut as the present matter we have referred to that order earlier. Consistency in the interpretation of a tariff entry is very desirable and principles of taxability cannot vary from person to person or from office to office.

17. We are satisfied that the Departmental authorities applied Tariff Entry 29A to the facts and circumstances of this case on a total misunderstanding of the true import and meaning of the entry; and on the facts found by the Department, and available before them, the finding that the "Ice Cream Combination Cooler" was dutiable under this entry was plainly unsupportable and clearly wrong on the face of it. Moreover, the assessee had expressly stated before the authorities that the unit was assembled "according to the requirements of the parties and the space available". This crucial aspect was not considered by the Department. The learned Judge was therefore right in setting aside the assessment, and the appellate and revisional orders and we affirm the judgment of the learned Single Judge.

The Writ Appeal fails and is dismissed with costs.