
(1997) 10 SC CK 0008

In the Supreme Court Of India

Case No : Civil Appeal No. 2155 of 1991

Collector of Customs, Bombay

APPELLANT

Vs

Perfect Machine Tools Co. Pvt. Ltd.

RESPONDENT

Date of Decision : 15-10-1997

Acts Referred:

Customs Act, 1962 — Section 25

Citation : (1999) 80 ECR 306 : (1997) 96 ELT 214 : (1998) 8 JT 406 : (1998) 9 SCC 418

Hon'ble Judges : S. C. Agrawal, J; B. N. Kirpal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal is directed against the judgment dated 4-2-1991 passed by the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal"). The respondent had imported consignment of "Klingelnberg In volute and Helix Tester" Model PFS 600 with accessories/attachments. The said equipment included Electronic Pitch Tester Attachment. The question for consideration is whether the concessional rate of customs duty on the basis of Notification No. 49/F. No. Bud (Cus)/78 dated 1-3-1978 can be held to be applicable in respect of the said Electronic Pitch Tester Attachment.

2. By Notification No. 49/F. No. Bud (Cus)/78 dated 1-3-1978 issued in exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act exemption had been granted in respect of goods specified in the table to the said notification and falling within Chapter 90 of the First Schedule to the Customs Tariff Act, 1975 when imported into India from so much of that portion of the duty of customs leviable thereon, as was in excess of 25% ad valorem. "Gear Profile and Helix Tester" was mentioned at Serial No. 2 of the table.

3. The respondent claimed the benefit of the concessional rate of customs duty in respect of the entire equipment including the Electronic Pitch Tester Attachment. The Assistant Collector of Customs held that benefit of the concessional duty

could not be extended to the Electronic Pitch Tester Attachment and was available only in respect of the main machine. The Collector of Customs (Appeals), however, accepted the claim of the respondent and held that concessional rate of duty was also chargeable on the import of the Electronic Pitch Tester Attachment. The Tribunal, by the impugned judgment, has affirmed the said view of the Collector (Appeals). Hence this appeal.

4. The learned Additional Solicitor General has urged that since the Tribunal has found that Electronic Pitch Tester Attachment is an attachment which is in the nature of an accessory, the benefit of the concessional rate of customs duty under the notification dated 1-3-1978 could not be extended to the said attachment and the Tribunal was in error in extending the benefit of concessional duty under the said notification. In this connection, the learned Additional Solicitor General has placed reliance on the principle governing interpretation of a notification granting exemption from duty as laid by this Court in *Novopan India Ltd., Hyderabad Vs. Collector of Central Excise and Customs, Hyderabad*, this Court has said:

"The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee -- assuming that the said principle is good and sound -- does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exempting provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State."

5. In the present case, the Tribunal after referring to the mode of working of the Pitch Tester, as mentioned in the catalogue of the manufacture, has observed:

"The purpose of this equipment is to complete testing of gears with the help of a computer at a greater speed than testing the gear by manually operated equipment. It is fitted with the main equipment and cannot by itself function independently. It is meant for the efficient working of the main equipment to produce better and accurate reading."

The Tribunal has proceeded on the basis that:

"An attachment which is used with the tester cannot be excluded from the scope of the notification. No specific condition for such exclusion is mentioned. So long as it is imported along with the main equipment which is eligible for the exemption, it cannot be denied the concession."

6. The Tribunal, in our opinion, was in error in construing the notification dated 1-3-1978 to hold that since the Electronic Pitch Tester Attachment has not been expressly excluded in the said notification it must be treated to have been included therein. The said view of the Tribunal is not in consonance with the principle laid down by this Court in *Novopan India Ltd.*¹ for construing a notification granting exemption from duty. In accordance with the said principle it

must be held that when an accessory to a machine is imported with the machine, unless the accessory has been expressly included in the exemption notification it would not be entitled to the concessional rate of customs duty under the notification dated 1-3-1978. Having regard to the finding recorded by the Tribunal, the Electronic Pitch Tester Attachment must be held to be an accessory of the Helix Tester imported by the respondent.

7. Shri V.J. Francis, the learned counsel for the respondent, has urged that since an attachment cannot be operated independently of the main machinery, it should be treated as a part of the machine and, therefore, the benefit of the concessional rate of duty under the notification dated 1-3-1978 should be extended to the attachment. We are unable to agree. The mere fact that the Electronic Pitch Tester Attachment cannot be operated independently of the main machine does not mean that it is not an accessory and is a part of the machine. Even in the absence of the said attachment the machine can be operated. Once it is held that the Electronic Pitch Tester Attachment is an accessory to the main machine, it must be held that since the notification providing for concessional rate of customs duty has not expressly included the accessories for the purpose of grant of concessional duty, the benefit of the concessional duty would not be available in respect of such accessory. In these circumstances, we are unable to uphold the impugned judgment of the Tribunal.

8. The appeal is, therefore, allowed, the impugned judgment of the Tribunal dated 4-2-1991 as well as the order of the Collector of Customs (Appeals) dated 12-8-1980 are set aside and the order of the Assistant Collector of Customs is restored. No order as to costs.