

(2001) 08 SC CK 0159

In the Supreme Court Of India

Case No : C.A. No.-007303-007306 / 2000

Commissioner of Customs, New Delhi

APPELLANT

Vs

M/s. Parasrampuriah Synthetics Ltd.

RESPONDENT

Date of Decision : 30-08-2001

Acts Referred:

Customs Act, 1962 — Section 108, 112, 28(1)
Income Tax Act, 1961 — Section 32, 43(3)

Citation : AIR 2001 SC 3501 : (2001) AIRSCW 3714 : (2001) 93 DLT 339 :
(2001) 77 ECC 449 : (2001) ECR 185 : (2001) 133 ELT 9 : (2002) 253 ITR 274 :
(2001) 7 JT 243 : (2001) 6 SCALE 53 : (2001) 9 SCC 74 : (2002) 125 STC 255 :
(2001) 6 Supreme 810

Hon'ble Judges : U. C. Banerjee, J;Shivaraj V. Patil, J

Bench : Division Bench

Advocate : Soli J. Sorabjee, Attorney General, N.K. Bajpai, Dileep Tandon and
B.K. Prasad, for the Appellant; V. Sridharan, A. Madhav Rao, M.P. Devnath, Alok
Yadav and V. Balachandran, for the Respondent

Final Decision : Allowed

Judgement

Banerjee, J.—In the light of the contentions raised and submissions made on behalf of either side, the following question arises for consideration and decision in these appeals:-

"Whether the benefit of exemption under Notification No.25/95 dated 16.3.1995, as amended, is available to the goods i.e. printed drawings, designs and plans under the Foreign Transfer of Technology Agreement imported by the respondent?"

2. On the factual score it appears that the respondent imported certain printed drawings, designs and plans under an agreement for transfer of technology for the purpose of setting up a plant to manufacture Polyester, Polyester Filament Yarn and Polyester Staple Fiber: whereas the assessee contended that the goods so imported are covered under Sl. No. 10 of the Notification No. 25/95 cus dated

16.3.1995 having 'Nil' rate of the duty: The Revenue contended that the goods fall under Sl.No. 15 of the notification attracting 10 per cent ad valorem. Before proceeding further with the matter the variable rate of duty chargeable as appears from the table in the Exemption Notification and in particular Sl.Nos. 10 and 15 thereof are noted hereinbelow:

TABLE ----- S. Chapter
Description of goods Rate Conditions No. or heading No. or sub- heading No.
----- (1) (2) (3) (4) (5)

... 10. 49 Printed books (including Nil -- covers for printed books, and printed manuals including those in loose- leaf form with binder. ... 15. 49.06 Plans. drawing and 10% ad -- and designs valorem 49.11 ... 3. The factual score further depicts that by reason of the classification of the goods in question by the revenue authorities as falling under Chapter 49.11, the goods imported were valued at DM - 32,66,900.00 equivalent to Rs.7,50,61,438.00 for the purpose of duty thereon. The Commissioner of Customs however took the view that by reason of non-payment of duty as presented in the Table as above the goods are liable to be confiscated and since the same were not available for such confiscation, he imposed penalty of Rs.10 lakhs on the importer u/s 112 of the Custom Act and further penalty of Rs.5 lakhs each on three of the Directors of the Company being the importer herein and hence the appeal before the Tribunal (CEGAT). The Tribunal however, on a detailed judgment came to the conclusion that the materials imported by the appellant are books coming under Tariff item 49.01 and thus coming within the ambit of Sl. No. 10 of the Exemption Notification by reason where for question of levy or payment of any duty for the same would not arise as for the articles so imported rate of duty was 'Nil' in terms of the Exemption Notification. The order of the commissioner of Customs thus stood reversed in its entirety including that of the penalties imposed and hence the appeal by way of a SLP by Commissioner of Customs, New Delhi and the subsequent grant of leave by this Court.

4. Incidentally, in view of certain conflicting decisions of the Tribunal, the matter was referred to the larger Bench of the Tribunal and the latter upon consideration of the relevant facts and materials on record, came to the conclusion as regards entitlement of the assessment under the exemption notification as detailed above.

5. Significantly, in this appeal, we have to decipher the true intent and meaning of the words 'printed books' and "manuals" as covered under Serial No.10 as also 'plan', 'drawing' and 'designs' as covered under Serial No. 15 of the concerned notification.

6. Let us first as to the true grammatical meaning of the words included in Sl. No. 15 to wit; "plan, drawings and designs". "Plan" in common acceptation means 'a drawing or diagram made by projections on horizontal plane'. The Law Lexicon attributes it to be a design or a sketch and is a draft or form of representation and its synonyms are sketch and design. Corpus Juris Secundum

(Vol. 70) attributes a meaning in the similar vein as 'a draft or form or representation of a horizontal section of anything, as of machinery; a map..a scheme; a project, also a method of action, procedure, or arrangement.

7. The word 'drawing' in common acceptation however, mean and include 'art of representing by line, delineation without colour or with single colour' and Corpus Juris Secundum defines it as meaning a representation on a plane surface, by means of lines and shades.

8. The third expression viz., 'design' in popular parlance is used as a synonym with plan and includes a sketch. Some times it has also been held to be synonymous with 'figure'. The expression 'design' has within its ambit many facets including a criminal design which connotes an evil desire, obviously exemption notification cannot possibly mean and imply a meaning which can be attributed to be an evil one.

9. The three words 'plan, drawing and design' however, convey more or less a common attribution and identical meaning, though however, in a larger spectrum, three words used in the exemption notification have three individual attribute by reason where for, legislature thought it fit to specifically refer to each of these words.

10. Turning attention on to Serial No.10, be it noted that in Chapter 49 'printed books' and 'printed manuals' including those in loose-leaf form with binder, has been specifically referred to a 'Nil' duty article. It is in this context that the learned Attorney General in support of the appeal contended that in general trade parlance a book is known by feature like (i) a book has an author, (ii) A book has a publisher, (iii) A book is a priced publication, (iv) The book is available to all and sundry who pay for it, (v) The book does not have a Memorandum of Understanding; (vi) There is no confidentiality about the book; (vii) A book has a subject to deal with; (viii) the pages are serially numbered and neatly bound; and (ix) the last but not the least, it should have ISBN Code i.e. International Books Subscriber Nomenclature.

11. As a matter of fact, it has been the contention of the appellant that Serial No. 10 has been incorporated in the exemption notification to cover literary works of all kinds text books and technical publication. Mr. Attorney General rather strongly contended that a perusal of the volume presented in Court, by itself depicts and lends credence to his contention that imported goods cannot come within the ambit of 'printed books' : It is a documentation with vendor's drawings and operating and maintenance manuals and a close look would depict that the same is an installation and planning manual issued by Zimmer. Whilst on the subject it has further been contended that through Revenue intelligence it was discovered that the Respondents imported drawing, design and plans under the Foreign Transfer of Technology Agreement but had not paid any customs duty on such import and by reason therefor, a show cause notice was issued as to why an amount of Rs.76,66,494/- should not be demanded u/s 28(1) of the Customs

Act, 1962 and as to why penalty should not be imposed.

12. The Commissioner in his order upon recording the submissions of the respondents herein observed that out of 97 volumes of imported materials, 23 volumes contained pictorial drawings and designs, while 46 volumes contained textual materials with a few drawings and designs. The Commissioner of Customs in his elaborate and considered order dated 31.10.1997, while referring to the various documents and statements of various persons/directors of the assessee, in para 63 has stated thus:-

"63. In this case, the statements of Shri Om Prakash Parasrampur. Director, Dr. S.C. Rustagi & Shri Alok Parasrampur were recorded u/s 108 of Customs Act, 1962 wherein all these inter alia admitted that the technical documents, as per the said agreement had been brought into India and no duty was paid. They also admitted that the importation of technical documents in the form of drawings and designs, attracts duty under chapter heading 4906/4911 at the relevant period of time. I further observe that M/s Parasrampur Synthetic Ltd. has already deposited 30 lakhs of rupees as duty liability in anticipation of adjudication by the department. Since the clandestine import of technical documents and subsequent non-payment of duty applicable on such had been admitted by M/s. Parasrampur Synthetic Ltd., through the statements of Shri. Om Prakash Parasrampur, Shri Alok Parasrampur and Dr. SC Rustagi, I do not want to go in details on the issue whether the goods under reference attracted any duty at the relevant period of time. There is also no denying the fact that at the relevant period of time, the importation of technical documents in the form of design and drawing were chargeable to duty under Tariff heading No.4906/4911."

13. The Tribunal, however, while dealing with the issue, placed strong reliance on the decision of this court in Scientific Engineering House (P) Ltd. Vs. Commissioner of Income Tax, Andhra Pradesh, . The Tribunal upon appreciation of the contents of the judgment of this Court in Scientific Engineering (supra) came to a conclusion that the imported goods are printed books and they come under Chapter 49 and as such they are entitled to complete exemption as per the general exemption No.121 covered by S. No. 10 of the Notification as noticed hereinbefore.

14. While relying upon the judgment in Scientific Engineering (supra), the Tribunal placed reliance on the observations of this Court viz. 'it cannot be disputed that these documents regarded collectively will have to be treated as a book' and came to a conclusion as noticed above. It appears and has been used in support of the finding totally out of context. As a matter of fact, in our view paragraph 13 of the Report, runs counter to the findings of the Tribunal and it is in this context, paragraph 13 is noticed as below:

"13. If the aforesaid test is applied to the drawings, designs, charts, plans, processing data and other literature comprised in the 'documentation service' as specified in Clause 3 of the agreement it will be difficult to resist the conclusion

that these documents as constituting a book would fall within the definition of 'plan'. It cannot be disputed that these documents regarded collectively will have to be treated as a 'book', for the dictionary meaning of that word is nothing but a number of sheets of paper, parchment, etc. with writing or printing on them, fastened together along one edge, usually between protective covers; literary or scientific work, anthology, etc., distinguished by length and form from a magazine, tract, etc." (vide Webster's New World Dictionary). But apart from its physical form and question is whether these documents satisfy the functional test indicated above. Obviously the purpose of rendering such documentation service by supplying these documents to the assessee was to enable it to undertake its trading activity of manufacturing theodolites and microscopes and there can be no doubt that these documents had a vital function to perform in the manufacture of these instruments; in fact it is with the aid of these complete and up-to-date sets of documents that the assessee was able to commence its manufacturing activity and these documents really formed the basis of the business of manufacturing the instruments in question. True, by themselves these documents did not perform any mechanical operations or processes but that cannot militate against their being a plant since they were in a sense the basic tools of the assessee's trade having a fairly enduring utility, though owing to technological advances they might or would in course of time become obsolete. We are, therefore, clearly of the view that the capital asset acquired by the assessee, namely, the technical know-how in the shape of drawings, designs, charts, plans, processing data and other literature falls within the definition of 'plant' and therefore a depreciable asset." (Emphasis supplied)

15. While there is some factual divergence as noticed above but the factum of the drawings etc. not forming part of a book within the exemption notification stands accepted in *Scientific Engineers* (supra) as would be evident from the emphasised portion in paragraph 13 noticed above. In the view of the matter, the aforesaid decision of this Court in *Scientific Engineers* (supra) does not lend any assistance to the assessee, rather runs counter to the respondent's contentions. As can be seen from one of the volumes produced before us, it contains documents in loose sheets merely put up in a folder. It has none of the characteristics of a book known in the common trade parlance. At any rate, the principal interest in the goods in related to transfer of technology to the assessee in the form of drawings, designs and plans for setting up plant to manufacture polyester, polyester filament yarn and polyester staple fiber. Thus viewed from any angle, the goods imported by the assessee are not covered by Sl. No. 10 but are covered by Sl. No. 15 of the said exemption notification.

16. Incidentally, the decision of the High Court of Gujarat in the case of *Commissioner of Income Tax, Gujarat-II Vs. Elecon Engineering Co. Ltd.*, has been strongly relied upon by the Tribunal and it has also been recorded in the order impugned that the decision was subsequently approved by this Court. While it is true that *Elecon Engineering* (supra) stand approved by this Court but paragraph 14 in the decision in *Scientific Engineering* (supra) would make the

situation clear enough to indicate that the same does not convey what the learned Tribunal wanted to convey. Paragraph 14 as noticed above reads as below:

"14. Counsel invited our attention to the decision in CIT v. Elecon Engineering Co. Ltd. where the Gujarat High Court, has, after exhaustively reviewing the case law on the topic, held that drawings and patterns which constitute know-how and are fundamental to the assessee's manufacturing business are 'plant'. We agree and approve the said view."

17. The question thus arises as to whether articles imported satisfy the requirements of Serial No. 10 of the notification. Incidentally, this Court in Scientific Engineering (*supra*) categorically posed a question as to whether apart from the physical form, the documents satisfy the functional test! Basis issue thus would be the nature of articles imported: now what these documents are. Admittedly in terms of the agreement between the parties, these documents cannot but be attributed to be technical know-how in the shape of drawing, design, plan and other literature; It is a literature or specification for a particular plant to manufacture Polyester, Polyester Filament Yarn and Polyester Staple Fiber: Even without adverting to the general trade parlance of the word 'book' and its known features, a plain look at the book itself denotes it to be a Installation and Planning Manual. The documents through loosely kept in the binder in known as Zimmer Documentation as regards the Fisher-Rosemount Systems. It is a technology transfer agreement which stands documented in a folder. The heading itself record "Installing CHIP Products and Application Software". The heading itself thus indicative of not being a work of art by an author - it is a record of scientific progress achieved and this particular achievement is being transferred by way of Transfer of Technology Agreement between the two parties and thus cannot but be termed to be a "technical know-how in the shape of a drawings, designs, charts, plans and other literature" - these items have been ascribed to be a part of the plant for the purposes of Depreciation Allowance in terms of Section 32 and 43(3) of the Income Tax Act. Merely by reason of the factum of certain writings on various sheets of papers one cannot ascribe the documentation to be a 'book': The work 'book' has not been defined in the Act but the 'book' in common acceptance is a literary composition from which one may extend or advance his or her knowledge and learning:

18. In any event, one of the basic cannon of interpretation of statute is that the legislature intends to ascribe the ordinary common parlance and meaning to the words used therein. In the matter under consideration, the legislature has used the word 'printed books' and clarified it by inclusion of covers - the intent thus seems to be rather obvious to mean books in ordinary sense and not any other meaning. The legislature has also included 'printed manuals' and explained it by express words "including those in the loose leaf form with binder". Can the articles imported be termed to be 'printed manuals' in 'loose leaf form with

binder', unfortunately, the answer cannot be in the affirmative. It contains specifications in terms of a technology transfer agreement, it is nota collection of various articles in trade journals but a definite importation of technology transfer which obviously was not intended in mean by the user of the word 'manual'. The word 'manual' means and implies a small book for handy use and includes a reference book, a hand-book as also a text book (vide Concise Oxford Dictionary) and on attribution of the same meaning, the words used by the legislature cannot identify to be a product of technology transfer between two countries. Ordinary common parlance ought to be attributed for the expressions used by the legislature and on attribution thereof one cannot possibly come to a conclusion that the exemption notification ever aimed at extending the meaning to the extent as has been effected by the Tribunal. The decision of the Court in Scientific Engineering (supra) has been totally misread and misapplied in the contextual facts - Scientific Engineering (supra) on the contrary lends all possible credence to the contentions as propagated by the appellants and not the Respondents. The decisions of this Court in the case of Collector of Central Excise, Baroda Vs. Indian Petro Chemicals, and H.C.L. Limited v. Collector of Customs, New Delhi 2001 (130) E.L.T.405 do not in any way lend any support to the contentions of the respondent herein by reason of the special fact situation as above and in any event we are not concerned with two notifications, one of which confers benefit on to the assessee. Thus reliance thereon is totally misplaced in the facts of the matter under consideration.

19. In the view as expressed above, we are not inclined to lend concurrence to the judgment of the Tribunal and as such these appeals succeed. The order of the Tribunal stands negated and that of the Commissioner, Customs restored. We thus answer the question noticed above in the negative. There will be no order however, as to costs.