

(2017) 01 BOM CK 0188
In the Bombay High Court
Case No : 1610 of 1991

Godrej & Boyce Manufacturing Co. Ltd.	APPELLANT
Vs	
Union of India & Ors.	RESPONDENT

Date of Decision : 23-01-2017

Acts Referred:

Citation : (2017) 01 BOM CK 0188

Hon'ble Judges : S.C. Dharmadhikari, B.P. Colabawalla

Bench : DIVISON BENCH

Advocate : Arshad Hidayatullah, Shailaja Kher, Hidayatullah, Chandni Tanna, Makarand Joshi, M. Dwivedi, Vipul Bajpayee

Judgement

1. This writ petition challenges a show cause notice issued by the respondent-Revenue and thereafter an order made in furtherance thereof.
2. The challenge arises in the following facts and circumstances. The petitioner is a company incorporated under the Indian Companies Act, 1956, and the respondent Nos.2 and 3 are the officers of respondent No.1 exercising powers under the then Central Excise and Salt Act, 1944, The Central Excise Rules, 1944 and the Central Excise Tariff Act, 1985. The fourth respondent is a statutory Board / body constituted under the Central Board of Revenue Act, 1963.
3. The petitioners began the manufacture of hermetic motors in 1964/1965. They were issued a licence for such manufacture. The licence was renewed from time to time. There are two main parts of this motor, namely, stators and rotors. The hermetic motors manufactured by the petitioners are, in turn, used as component of compressors. The compressors in their turn are used in refrigerators or in air conditioning systems.
4. For the period 1964-1965 to 28th February, 1986, the petitioners filed various classification lists classifying the above stators and rotors cleared together under Item 30(c) and stators or rotors cleared individually under Item 30(d) of the erstwhile First Schedule to the Act. These classifications lists have been approved

by the Excise Department. It is common ground that The Central Excise Tariff Act, 1985, was introduced on 1st March, 1986. Thereupon the company filed fresh classification list classifying stators and rotors when cleared together under sub-heading 8501.00 and when cleared individually under subheading 8503.00. The classification lists from 1st March, 1986, to 29th February, 1989, have been finally approved. On 11th January, 1989, the second respondent purported to issue a show cause notice to the petitioner-company seeking to classify stators and rotors under sub-heading 8414.91 and alleging that there has been a short levy of the duty amounting to Rs.1,27,45,805.02 for the period 1st July, 1988 to 31st December, 1988.

5. On 1st March, 1989, the company filed a fresh classification list No.1 of 1989 with effect from 1st March, 1989, inter alia, classifying stators and rotors separately under heading 8503.00. The classification list was provisionally approved. The petitioner then replied to the show cause notice, copy of which is at Exhibit-B, inter alia, relying on the Circular No.6/1986-CX4 dated 25th September, 1986 and trade notice issued by the Collector of Bombay-I, Vadodara and New Delhi. On 21st April, 1989, the second respondent issued another show cause notice to the petitioner for the period 1st January, 1989 to 31st March, 1989, copy of which is at Annexure-D raising self-same grounds.

6. By letter dated 14th May, 1989, the company replied to the show cause notice dated 21st April, 1989. On 3rd August, 1989, the Revenue issued an amendment to the show cause notice enhancing the amount allegedly short levied. That amendment was also replied to.

7. On 13th December, 1989, the Central Board of Excise and Customs purported to issue a Circular No.29/1989 whereby it directed that all earlier instructions had been withdrawn. All Collectors of Central Excise and other officials were directed to classify stators and rotors under heading 84.14. The said circular, however, directed that the practice followed in the light of the earlier circular dated 26th September, 1986, be changed only prospectively. Annexure E is a copy of this Circular.

8. Thereafter, the petitioners were directed to file fresh classification list by letter dated 20th February, 1990. In consequence of this, all further classification lists were filed invoking sub-heading 8414.91, but under protest. Then, a demand was raised and a personal hearing was granted. The petitioners appeared for the personal hearing and also filed written submissions.

9. However, not being satisfied with all this, the second respondent passed the impugned order dated 6th December, 1990, inter alia, classifying stators and rotors used in the manufacture of hermetic compressors under sub-heading 8414.1 and the rate of duty was notified at 40% ad-valorem under Notification No.166/1986.

10. This writ petition was entertained directly against the impugned order passed on the show cause notices by over-ruling the Revenue's objections that there is

a remedy available to the petitioners to challenge this order in appeal.

11. The writ petition was admitted on the ground that for a period of 25 years stators and motors have been classified and charged to duty as electric motors when cleared together and as parts of electric motors when cleared separately. That long standing practice is sought to be changed and retrospectively although the clarificatory circular prohibits this exercise.

12. The only submission raised before us by Mr. Hidayatullah, learned senior counsel for the petitioners is that the impugned order is based on the 13th December, 1989, clarification. That is clearly prospective. When the show cause notice was issued that clarification was not issued by the Board. Therefore, relying upon this subsequent clarification a prior demand and raised in the two show cause notices could not have been confirmed. It is, therefore, his submission that the first show notice is dated 11th January, 1989. The second show cause notice is dated 12th April, 1989. During the subsistence of these show cause notices and when they were pending adjudication, the earlier 1986 circular and instructions of the Board were in force. Therefore, they could not have been ignored and to take a view contrary to the same.

13. Mr. Hidayatullah, in support of his submissions, places reliance upon the judgments of the Hon'ble Supreme Court in the cases of Collector of Central Excise, Bombay vs. Jayant Dalal Private Limited reported in 1996 (88) ELT 638, Paper Products Ltd. vs. Commissioner of Central Excise 1999 (112) ELT 765 and finally Commissioner of Customs, Calcutta vs. Indian Oil Corporation Limited 2004 (165) ELT 257.

14. On the other hand, Mr. Dwivedi appearing on behalf of the Revenue would support both the show cause notices and the impugned order. He would submit that once the show cause notices are based on the independent view of the adjudicating officer and he could have in the matters of interpretation of the entries and classification of the goods taken such a view, then, the Circulars cannot bind him. Thus, his argument is that if in the teeth of the language of the tariff entry the circulars cannot be sustained, then, they do not bind the Revenue. Therefore, the above judgments of the Hon'ble Supreme Court cannot assist the petitioner.

15. On hearing both counsel and perusing with their assistance the writ petition and all the annexures thereto, we are unable to agree with Mr. Dwivedi. The show cause notice has been issued on 11th January, 1989. The show cause notice relies upon the tariff entries but seek to classify the products, namely, stators and rotors under Chapter Heading No.8414.91. On 21st April, 1989, this was also the position when the second show cause notice was issued. However, what this ignores is the clear instruction coming from the Central Board of Excise and Customs dated 25th September, 1986. The said circular is addressed to all Collectors of Central Excise and others. The subject of the same is Central Excise - classification of parts and accessories of refrigerating and air conditioning

machinery and appliances. There was a doubt and which was sought to be cleared. The All India Air conditioning and Refrigeration Association, New Delhi furnished a list of parts and accessories in respect of which they had such doubts. Though the matter was examined by the Board and it opined that it was not possible in the absence of detailed technical information of each of the parts or accessories to provide comprehensive rulings on the classification of each of the products, nevertheless the guidelines as emerging from these circular were issued. Annexures A and B to this circular are relevant for our purpose. They are referable to paragraph 3 of the said circular. Annexure-A contains list of parts and accessories of air-conditioning or refrigerating machinery or appliances and machinery for treatment of materials by a process involving a change of temperature which are classifiable under the headings 8415.00, 8418.00 or 8419.00 of the central excise tariff. The clear clarification and emerging from a reading of Sr. Nos.11 and 47 is that stators and rotors and named specifically as description of the product is classifiable under sub-heading 8503.00. Then comes another departmental clarification and which is based on the above. That comes on 1st March, 1988, but does not alter the position. What we have found is that on the date of issuance of the show cause notice, this was the position regarding classification of stators and rotors.

16. On 13th December, 1989, the Board issued a circular, copy of which is at page 93 of the paper-book. That was on the subject of classification as stators and rotors used in the manufacture of hermetically sealed gas compressors. The Board proceeds to clear the doubt and then clarifies that although the classification is loaded in favour of heading No.85.03 since in the case of compressor also an electric motor comes into existence functionally, not in identifiable manner notwithstanding, it was decided to obtain the opinion of the DGTD as to whether stators and rotors used in compressors could also be treated as parts of electric motor. That opinion was obtained and the Board agreed with it. Therefore, stators and rotors of hermetically sealed compressors are parts of compressors for use solely or principally with the compressors and are appropriately classifiable under heading 84.14. The relevant part of the Board's Circular of December 1989 appearing at page 95 reads as under :

" Board has agreed with the above views and accordingly holds that the stators and rotors of hermetically sealed compressors for use solely or principally with the compressors and are appropriately classifiable under heading 84-14. Board's earlier instructions contained in F.No.145/5/86-CX-4 dated 25.9.86 providing for classification under heading 9503 may be treated as modified in respect of such stators and rotors for hermetically sealed compressors. However, the practice followed in the light of earlier clarification of the Board may be changed only prospectively."

17. Once there is a clear instruction that the practice followed in the light of the earlier clarification of the Board may be changed only prospectively, we have no doubt in our minds that on the date on which the earlier circular was in force, the

show cause notice could not have been issued nor the demand raised.

18. We are in agreement with Mr. Hidayatullah that the law laid down by the Hon"ble Supreme Court in the case of Collector of Central Excise, Bombay vs. Jayant Dalal Private Limited (supra) binds the Revenue. Once there are clarifications given and to operate prospectively, then, how the authorities and answerable to the Board and bound by its instructions could have held otherwise has not been explained at all. It is precisely this tendency and which deserves to be curbed according to the Supreme Court in Paper Products (supra). Therefore, the Hon"ble Supreme Court, after referring to all its earlier views, held as under :

"2. The appellant also submits that with effect from the said date the appellant is classifying its products in terms of Circular No.6/89 dated 16-1-1989. However, it is contended that in view of the fact that prior to issuance of the said Circular dated 16-1-1989, Circular No.4/85 being in force, the appellant's products are liable to be classified for duty under Chapter 49 of the Act. It was also contended that these Circulars being binding on the Department, they are bound in law to comply with the same and the show cause-cum-demand notices issued by the authorities being contrary to the relevant Circulars in force, the said notices/demands are liable to be quashed. On behalf of the Union, it is contended that though the Circulars in question are binding on the Department, they are not binding on the adjudicating authorities, therefore, it was open to the tribunal to have independently considered the case and having done so correctly, the appellant's appeals before us are devoid of any merit."

19. Even the latter judgment in the case of Commissioner of Customs vs. Indian Oil Corporation Limited (supra) reiterated the principles in paragraph 12 and conclusively held that a show cause notice for demand contrary to existing Circulars of the Board is ab initio void.

20. In the light of these legal principles and nothing contrary to the same being brought to our notice, we are unable to agree wi-th Mr. Dwivedi that it was open for the adjudicating authority / the Assistant Collector at that time, to issue the show cause notice. That is issued by him, according to Mr. Dwivedi, on the interpretation of the tariff entry and which is principally and essentially the function of the adjudicating authority. That may be so, but once there was a clear instruction from the Board and no challenge to the authority of the Board having been raised to issue these circulars nor to the circulars themselves, they bind the Revenue. Once they bind the Revenue as laid down in the Supreme Court decision, then, we do not see how this contention can be sustained. It also cannot be sustained in the light of the above reproduced paragraph of the subsequent circular dated 11th December, 1989.

21. Looked at from any angle, the show cause notice and the demand in furtherance thereof cannot be sustained. We, however, accept Mr. Hidayatullah's statement that the petitioners are not challenging the legality and validity of the subsequent circular dated 13th December, 1989 and have implemented the same

so also acted upon it prospectively. To that extent the circular and its contents are not challenged nor the authority of the Board.

22. As a result of the above discussion, Rule is made absolute. Both the show cause notices are quashed and set aside. The demand in furtherance thereof is also quashed and set aside.