(1982) 07 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petition No. 16754 of 1981

Government Tool Room and Training Centre, Rajajinagar — APPELLANT

Vs

Asstt. Collector of Central Excise, Bangalore and Another — RESPONDENT

Date of Decision : 22-07-1982

Acts Referred:

Citation : (1984) 3 ECC 175 : (1982) 10 ELT 898

Hon'ble Judges : M.P. Chandrakantaraj Urs, J

Bench : Single Bench

Advocate : S.N. Murthy, for the Appellant; K. Shivashankar Bhat, Central Government Advocate, for the Respondent

Judgement

1. This is a writ petition of the Government Tool Room and Training Centre an institution set up by the Government of Karnataka with the object of contributing to the development of small scale and other industries in India. The institution is run with Danish collaboration.

2. The petitioner manufactures tools like press tools, moulds, die casting dies, jigs and fixtures etc., both in service Centre and Training Centre to which the institution is divided into. The products of the institution were listed and sent to the 1st respondent - Assistant Collector of Central Excise, Bangalore, for classification under Tariff Item No. 68 of the Schedule to the Central Excises and Salt Act, 1944 (hereinafter referred to as the Act). Thereafter, the Superintendent of Central Excise, II Division, Bangalore, sought opinion in respect of the classification from D.G.T.D. and Central Machine Tools Institute. The former was of the opinion that the moulds and die casting dies manufactured by the petitioner should be classified under Tariff Item No. 51-A of the Schedule to the Act and the latter i.e., Central Machine Tools Institute was of the opinion that it should be classified under the Tariff Item No. 68 of the Schedule to the Act. The 1st respondent enclosed the two opinions and sent it to the petitioner with a covering letter. Thereafter the 1st respondent issued a show cause notice dated 8-5-1979 calling upon the petitioner to show cause why excise should not

be levied in accordance with the rates specified in Tariff Item No. 51-A of the Schedule to the Act. The petitioner showed cause to the same. But, nevertheless, the 1st respondent passed his order dated 27-11-1979 holding the products of the petitioner-institution was liable to excise duty in accordance with the Tariff Item No. 51-A of the Schedule to the Act. On appeal to the 2nd respondent - Appellate Collector of Customs, Madras, the 1st respondent''s order came to be confirmed. Aggrieved by the same, the petitioner-institution has approached this Court under Art 226 of the Constitution inter alia contending that there is a total misdirection by the respondents in bringing to levy of excise duty, the products viz., moulds and die casting dies of the institution under Tariff Item No. 51-A of the Schedule to the Act instead of Tariff Item No. 68 which is the residuary item in the Schedule to the Act. It is not disputed that the petitioner-institution produces moulds, die casting dies, press tools, jigs and fixtures which to manufacture dies, tools etc., of plastic or malleable or liquid materials which the producers of Dolls Toys and the like use in their industries.

3. Therefore, the short question that falls for determination in this writ petition is whether the products of the institution are exigible to duty under the Act with reference to Tariff item No. 51-A or with reference to Tariff Item 68 of the schedule to the Act.

4. It is useful to extract the portion of the order of the 2nd respondent - Appellate Collector of Customs to understand how the department has reached the conclusion to bring the products of the petitioner institution to levy of duty under Tariff Item No. 51-A in the Schedule to the Act. The portion of the order reads as follows :-

"From the above it follows that dies, drop forging dies fall under Item (L), that moulding etc., fall under Item (3) above. Dies are actually inserts in a plastic mould. Die casting dies are used for the same purpose in which the only difference instead of plastic, metal moulds are cast. Moulds are used for giving shape and form to moulten or semi-moulten liquid either of plastic or metalice substance. The main consideration is whether the items are capable of being fitted to tools as per the descriptions given in the 4 sub-items of Tariff Item No. 51-A. As these items are meant to be fitted into tools in such manner they are to be classified under Tariff Item No. 51-A. I, therefore, hold that the moulds, dies and die casting dies will fall under Tariff Item No. 51A, and the lower authority''s order is according to law. In the result I reject the appeal."

Shri K. Shivashanker Bhat, learned Senior Standing Counsel for Central Government, has pointed out the dictionary meanings of the word ''Tools'', which word occurs in Item No. 51-A of the schedule to the Act and on that basis argues that anything which is used in machine or by hand in order to produce something or give shape to something is a ''Tool'' and therefore the department was justified in reaching the conclusion which respondents 1 and 2 did. The dictionary meaning of the word ''Tool'' wherein one of the meanings given in Webster''s Third new International Dictionary is :

"an instrument (as a hammer or saw) used or worked by hand; an instrument used by a handicraft men or labourer in his work....."

It is on the latter part of the two meanings extracted above that the learned Senior Standing Counsel for the Central Government relies upon to support the conclusions reached by the department to make the products of the petitioner-institution exigible to duty under Tariff Item No. 51A of the Schedule to the Act where also the word ''Tool'' occurs.

5. This is evidently because admittedly the products of the institution are used to encourable handicrafts in small scale industries in India. Undoubtedly, that is one way of understanding very broadly the word ''Tool''. But in the English language as is evident from the dictionary meanings, that word is capable of being used in different context to mean different things. In fact, it is common knowledge that even a man can become a tool in the hands of another as the expression goes. But that does not render human being into an organic inanimate implement. The correct approach which the respondents ought to have made in deciding this question is not on the opinion of the D.G.T.D. or the Central Machine Tools Institute. But the language of Entry in 51-A itself in the Tariff Item of the Schedule to the Act. Tariff Item No. 51-A reads as follows :

"51A. Tools, the following, namely :- (i) Hand tools, the following Pliers (including Ten per cent cutting pliers), spanners, wrenches, files and ad valorem rasps screw drivers (including racket types) - (ii) Tools for working in the hand pneumatic or with self-contained non-electric or electric motor;

(iii) Tools designed to be fitted into hand tools, machine tools or tools falling under sub-item (ii) including dies for wire drawing; extrusion dies for metals and rock drilling bits;

(iv) Industrial knives and blades for hand or machine saws."

From the above it is clear that even by the heading not all tools fall into that tariff Item, but any those which are named in that item as sub-items. While sub-item (i) speaks of hand tools, it is further restricted to include pliers of all kinds of spanners, wrenches, files and rasps, screw drivers (including ratchet tyres). By this method of naming and giving an exclusive meaning the Legislature has excluded other tools which are not named in the item or the sub-items. Similarly, in sub-item (ii) not all tools are included, but only tools for working in the hand pneumatic or with self-contained non-electric or electric motor. Thus only what is specified comes within the mischief of that item and not all the tools in general.

6. Similarly, item (iii) speaks of tools specially signed to be fitted into hand-tools, machine tools or tools falling under sub-item (ii), including dies for wire drawing; extrusion dies for metals and rock drilling bits. Possibly what has induced the respondents to bring the products of the petitioner-institution in this entry is with reference to extrusion dies for metals though by no stretch of imagination can the die casting dies and moulds of the petitioner-institution fall into their class of

tools described in Sub-item (iii), Sub-item (iv) clearly refers to knives and blades for hand or machine saws and therefore excludes all other knives which cannot be so used for industrial purposes. If this is borne in mind, moulds to which no reference is made in the entire item 51-A of the Schedule to the Act certainly does not fall under that item. As already observed by me, it is the reference to extrusion dies for metals and rock drilling bits which was weighted with the respondents. The word ''die'' also has several meanings in English language. They are two distinct words one referring to the cessation of life and the other to a number of other things. It is useful to set out the meaning of the word ''die'' as found in the Concise Oxford Dictionary 5th Edition published in India at page 339.

"die" small cube with faces bearing 1 - 6 spots used in games of chance; irrevocably decided; at state; as straight, true, (Archit) Plinth, cubic part of pedestal between base and cornice; engraved stamp for coining, striking medal, embossing paper etc."

Nevertheless, in spite of the restricted meaning of the word ''die'' in the latter sentence reproduced above, in common parlance it is used to mean cutting tools of all kinds whether used by hand or in machine with which metal or other hand objects can be given a defined shape to pre-determined measurements like cutting by use in a lathe or drilling machine or in a milling machine.

7. If this kind of analysis is made of the word ''Tools'' used in Item No. 51A of the Schedule to the Act, there would have been no occasion for the department namely, the respondents, to come to the conclusion which they did i.e., to hold moulds and die casting dies as falling under extrusion dies and press for rock drills occurring in sub-item (iii) of item No. 51-A of the Schedule to the Act.

8. It is represented from the Bar, by the learned counsel for the petitioner, that the press tools manufactured by the petitioner are admitted to fall under item No. 51-A of the Schedule to the Act.

9. For the reasons I have given, the moulds and die casting dies manufactured by the petitioner-company cannot be held to be exigible to excise duty under Tariff Item No. 51-A of the schedule to the Act and therefore they necessarily fall under Item No. 68 of the schedule to the Act. In this view, the petitioner must succeed and the impugned orders have to be quashed to the extent indicated above.

10. There was one other detect noticed in the order of the 1st respondent, that is without any material before him, he has reached the conclusion that the products were liable to duty under Tariff Item No. 51-A of the schedule to the Act, word ''dies'' fitted into machine tools or designed to be fitted into machine tools. That was not warranted in the circumstances of the case.

11. In the result, a direction will issue to the respondents to refund the difference in duty which they collected in excess in the light of this order. The refund shall be made after proper calculations within three months from the date

of receipt of this order.

12. However, before parting with this case, I must point out that the petitioner has not availed of a statutory remedy by way of revision to the Central Government. The learned Counsel for the petitioner submitted that was an innocuous remedy in as much as it was unlikely that the department would have given the relief and therefore such remedy was illusory. That is accepted as an exception to the general rule of this Court.

13. In the result, the will accordingly issue and be made absolute in the above terms. Annexures G and J are quashed as being illegal and without the authority of law.

