

(1986) 01 KAR CK 0041
In the Karnataka High Court
Case No : Writ Petition No. 19894 of 1979

Ideal Jawa (India) Pvt. Ltd.

APPELLANT

Vs

Assistant Collector of Central Excise, I.D.O., Mysore and
Others

RESPONDENT

Date of Decision : 20-01-1986

Acts Referred:

Central Excise Rules, 1944 — Rule 8, 8 (1)

Citation : (1986) 9 ECC 178 : (1989) 20 ECR 107 : (1986) 24 ELT 226

Hon'ble Judges : S.R. Rajasekhara Murthy, J

Bench : Single Bench

Advocate : K.S. Ramabhadran, for the Appellant; K. Shivashankar Bhat, Senior Central Government Standing Counsel, for the Respondent

Judgement

1. The petitioner is a Private Co., Ltd., manufacturing motor cycles known as Jawa/Yezdi of various capacity. the petitioner obtained a licence to manufacture motor-cycles in the year 1960. In the year 1971, Item No. 52 in the Central Excise Tariff was introduced, for the first time. That entry reads thus :-

"52. Bolts and Nuts, threaded or tapped and screws, | Ten per cent of base metal or Alloys thereof, in or in relation | ad valorem. to the manufacture of which any process is ordinarily | carried on with the aid of power. | 2. After the insertion of the said entry, the petitioner was asked to take out licence in respect of bolts and nuts manufactured by the petitioner-company. Those items are enumerated in the petition at page 15, and the description of the bolts and nuts and their functional utility is also given in the statement filed in that page. They also indicate the bolts and nuts used in the assembly of motor-cycles of different capacities.

3. Since the Department insisted on the petitioner to take out a licence in respect of the said items, the petitioner complied with the direction and took out a licence under protest and contended that the items in question cannot be classified as bolts and nuts falling under description of Item No. 52.

4. The petitioner's claim was rejected and an order was made by the Asst. Collector of Central Excise, Mysore. Against the said order the petitioner filed an appeal before the Appellate Collector of Central Excise, Madras, who by his order dated 6th September 1975 directed the first petitioner to adjudicate the matter afresh in the light of his order.

5. After the matter was remanded, the petitioner-Co., was called upon to file its objections. The petitioner contended and filed a written objection, as per Ext. A, in which it was explained that 9 items referred in the annexure cannot be classified as bolts and nuts. The Asst. Collector by his order dated 1-2-1975 overruled the objections of the petitioner and held that the 9 articles in question falls under the description of bolts and nuts in the sense, they were used as fasteners and they came within the purview of item No. 52. This order was affirmed by the Appellate Collector of Central Excise, Madras, by his order dated 6-9-1975. The petitioner agitated the matter before the Government of India in a revision filed under the Act. The Government of India also agreed with the order of the Appellate Collector and dismissed the revision.

6. Being aggrieved by its order, the petitioner has challenged the same in this writ petition.

7. It is contended by Sri Ramabhadran, learned Counsel for the petitioner that the nine articles which are sought to be assessed under item No. 52 are not bolts and nuts, as described in the said entry. It is his submission that each one of the items manufactured by the petitioner-Co., the description of which is given at page 15, is manufactured to specific drawing, meant for being used as parts of the motor-cycles manufactured by the petitioner-Co. The petitioner claimed exemption from the levy of duty under Notification No. 99/1971, dated 29th May, 1971 issued by the Central Government under Rule 8(1) of the Central Excise Rules ("the Rules"). The said notification is re-produced below :-

"In exercise of the powers conferred by sub-rule of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts motor vehicles, parts and accessories, falling under Item No. 34A of the First Schedule to the Central Excises and Salt, Act, 1944 (1 of 1944), other than those specified in the Schedule hereto annexed, from the whole of the duty of excise leviable thereon.

THE SCHEDULE

1. Brake Linings
2. Clutch facings
3. Engine valves
4. Gaskets
5. Nozzles and Nozzle holders
6. Piston Rings

7. Shock absorbers
8. Sparking plugs
9. Thin walled bearings
10. Tie rod end
11. Electric horns."

The contention of the petitioner, therefore, is that these articles in question is indisputably parts and accessories of motor-cycles manufactured by the petitioner and are entitled to exemption under the said notification and Entry 52 is therefore not applicable to the petitioner's case.

8. It is argued by Sri Shivashankar Bhat for the Revenue that the articles in question answer the description of bolts and nuts referred to in Item 52 and that therefore though the said articles are used in the assembly of the motor-cycles as component parts of the motor-cycles they are excisable to levy as nuts, bolts and screws falling under Entry 52.

9. The question, therefore, that arises for my consideration is : Whether the nuts and bolts, the description of which is given at page 15, are excisable to levy under Tariff Item 52 ?

10. The Notification No. 99/71 forms the basis of the petitioner's claim. On a proper reading of the said notification, according to the petitioner's contention, the bolts and nuts in question form component parts of the motor-cycles manufactured by the petitioner company and the motor-cycles would be incomplete without each one of the articles referred to at page 15 fitted into them.

11. The argument advanced by Sri Ramabhadran is, that it was the intention of the Government to tax only the items specified in the schedule to the said notification and that therefore all other parts and accessories, not referred to in the schedule, should be entitled to exemption. It is also the contention by the learned Counsel that the 9 items manufactured by the petitioner-company are not the nuts and bolts as understood in the ordinary commercial parlance and available in all hardware stores. It is his further contention that these are articles made to specification and meant to be used only as parts of the motor-cycles manufactured by the petitioner-company exclusively and are not of any utility otherwise.

12. Sri Shivashankar Bhat has relied upon the decision of the Supreme Court in *Indian Aluminium Cables Ltd. Vs. Union of India and Others*, , and the decision of the Bombay High Court in *Simmonds Marshal Ltd. Vs. M.R. Baraliker*, Assistant Collector of Central Excise, Pune and others,

13. He has, in particular, placed reliance on the observations of the Supreme Court made in Paragraph 13 of the Judgment. This is how their Lordships

summed up the true position in paragraph 13 :

"13. To sum up the true position, the process of manufacture of a product and the end use to which it is put, cannot necessarily be determinative of the classification of that product under a fiscal schedule like the Central Excise Tariff. What is more important is whether the broad description of the article fits in with the expression use in the Tariff. The aluminium wire rods, whether obtained by the extrusion process, the conventional process or by Properzi process, are still aluminium wire rods. The process of manufacture is bound to undergo transformation with the advancement in science and technology. The name of the end-product may, by reason of new technological process, change but, the basic nature and quality of the article may still answer the same description. On the basis of the material before us, it is not possible to record a positive finding that Properzi rods and wire rods are treated as distinct items in commercial parlance. Properzi Rod is a wire rod subjected to the Properzi process and is used for transmission of high voltage electric current."

14. The above observations were made by the Supreme Court in the light of the contention of the appellant before them that Properzi rods manufactured by the appellants could not be subjected to levy under entry 27(a)(ii) of the First Schedule of the Central Excise Act. That entry reads these :

"Aluminium -

(a)(ii) wire bars, wire rods and castings, not otherwise specified."

15. It was contended on behalf of the appellant that Properzi Rods were not the aluminium wire rods which could be brought to tax under Entry No. 27(a)(ii) and they were not the conventional wire aluminium rods falling under the said entry. It was the contention that the "Properzi rods" were the result of a special process and therefore they were distinct and different from aluminium rods mentioned in the entry.

16. The Supreme Court rejecting this contention held, as extracted above in paragraph 13.

17. The ratio of the decision of the Supreme Court, therefore, is that while determining the classification of a product under the Central Excise Tariff, it is important to first decide whether the broad description of the article fits in with the expression used in the tariff.

18. In the Bombay case their Lordships were considering the goods falling under Item 52, namely, bolts and nuts. It was claimed on behalf of the manufacturers that the "Nyloc nuts" manufactured by them could not be brought under Entry 52. The The argument was that they were different form ordinary nuts, they had a nyloc collar and in view of their special characteristics they could not be classified among the ordinary nuts and bolts available in hardware stores.

19. Rejecting this contention, their Lordships held, that nyloc nuts, though had

some special features, were essentially and primarily nuts and bolts. Therefore, their Lordships held that taking the commodity, as a whole into consideration, they would fall within entry 52 without laying undue stress on any isolated or special quality that may be attached to nyloc nuts.

20. These two decisions are relied upon by the learned Counsel for the Revenue for the proposition that the nuts and bolts manufactured by the petitioner-company can reasonably be classified as nuts and bolts under Entry 52. In the absence of any special quality or characteristic which is attached or referable to the said items of articles, the classification made by the department was held, justified.

21. Sri Ramabhadran has produced before me the nine articles which are the subject-matter of the writ petition. They are of various sizes, width and quality and appear to be specifically meant for being used as parts and accessories of the motor-cycles manufactured by the petitioner-company. Some of the articles are merely rods without any studs. Even the metal content appear to be different from articles to article. It may be that the said articles may be broadly classified as bolts and nuts in the generic sense in which they are referred to in Item 52 of the Central Excise Tariff, but the question is even so, whether they are eligible of exemption under Notification No. 99/71. Under that notification, it is specifically provided what are the items falling under item 34A, namely, parts and accessories of motor-vehicles, not otherwise specified, which are eligible of exemption from the whole of the duty of excise.

22. By Act 21/79, Item 34A of the Tariff underwent a radical change, namely, the parts and accessories of motor-vehicles which were excisable to duty under entry 34A (as specified in Notification 99/71) were enumerated in the entry itself and the articles referred to in the schedule to the notification were shifted to the entry itself adding some more.

23. Sri Ramabhadran, therefore, submitted that the intention of the Parliament to tax only such of those items referred to in the amended entry 34A should be subjected to levy and none others. In support of this submission, he relies upon the extract from CRAIES ON STATUTE LAW, referred in (1966) 61 ITR 443 - (Nalinikant Ambalal Mody v. S.A.L. Narayan Row, Commissioner of Income Tax, Bombay City I).

"Except as a parliamentary exposition, subsequent Acts are not to be relied on as an aid to the construction of prior unambiguous Acts. A later statute may not be refereed to interpret the clear terms of an earlier Act which the later Act does not amend, even although both Acts are to be construed as one, unless the later Act expressly interprets the earlier Act, is ambiguous, the later Act may throw light on it, as where a particular construction of the earlier Act will render the later incorporated Act ineffectually."

24. The construction placed by Sri Ramabhadran and the interpretation of the relevant Tariff item, with reference to the articles in question manufactured by

the petitioner-company, deserves to be accepted. As a result, the articles in question which are identifiable as parts and accessories of the motor-cycles, should be entitled to exemption under Notification 99/71.

25. On the facts of the present case, nine articles referred to at page 15 though described as bolts and nuts constitute component parts of the motor-cycles manufactured by it. As could be seen from the description of the articles they are special types of bolts, nuts and rods specifically manufactured to specification and as per the drawings for the assembly of motor-cycles manufactured by the petitioner-company. They, therefore, form integral part of the machines, with a distinct and specific function in the operation of the motor-cycles of which they are the component part.

26. Therefore, on a reasonable interpretation of the two items in the Excise Tariff 34A and 52 and apply in the notification to the facts of the case, the nine articles in question manufactured by the petitioner-company fall to be treated as parts and accessories of motor-vehicles under Item No. 34A and not under Item 52.

27. In the result, the writ petition is allowed and the order made by the Government of India dated 12-4-1979, as per Annexure F, is quashed.

28. The duty paid by the petitioner under protest on the said articles shall be refunded to the petitioner.