(1983) 09 CAL CK 0028

In the Calcutta High Court

Case No : Civil Rule No. 5755 (W) of 1981

Indo-Japanese Industries Limited	APPELLANT
Vs	
Assistant Collector, Central Excise	RESPONDENT

Date of Decision : 23-09-1983

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)
Factories Act, 1948 — Section 2
Industries (Development and Regulation) Act, 1951 — Section 10, 29B
Medicinal and Toilet Preparations (Excise Duties) Act, 1955 — Section 2

Citation : (1986) 24 ELT 527

Hon'ble Judges : Suhas Chandra Sen, J

Bench : Single Bench

Advocate : R.N. Bajoria, for the Appellant; S. Mullick, for the Respondent

Judgement

Suhas Chandra Sen, J.—The petitioners in this case have challenged the legality and validity of an order passed by the Assistant Collector, Central Excise, Calcutta. XIII Division. By the said order dated 25th June, 1981 the Assistant Collector, Central Excise, the Respondent No. 1 herein, directed the petitioner to maintain statutory Central Excise records and observe the formalities and clear all the excisable products "including Cycle Dynamo Lamp and Parts" falling under T.I. 68 on payment of appropriate Central Excise duty if the total value of such goods cleared during the preceding financial year exceeded Rs. 30,00,000. In that order it was clarified that Cycle Dynamo Lamp and Parts thereof were accessories and not parts of cycle and hence, were not eligible for exemption under Notification No. 55/75-C.E., dated 1st March, 1975.

2. The petitioners'' case is that since its inception, it is engaged in the manufacture of, inter alia, Cycle Dynamo Lighting Sets which can only be used on bicycles. The petitioner has alleged that after kerosene-fed lamp, specially manufactured for lighting purposes for bicycles, became obsolete, lighting requirements by Dynamo in cycles became very common and was an essential component of a bicycle and was the most convenient accepted mode of lighting

arrangement for using a cycle at night. The petitioner has further stated that the Cycle Dynamo Lighting Set is an essential part of a cycle. The current energising the bulb in the lamp is generated by a Dynamo which works by friction carried by the spindle set rubbing against the side of the cycle tyre. To facilitate the rotation of the Dynamo, the cycle tyre itself is given a special reinforcement as there is considerable amount of wearing out of the wall of the cycle tyre by the operation of the Dynamo. It has been stated that the Cycle Dynamo Lighting Sets manufactured by the company is specially designed for bicycles and cannot be used for any other purpose. The Dynamo Set cannot be used even in a Motor Cycle as the speed of the wheel and consequently the spindle of the rotor shaft will be too high for generating the current and energising the lamp.

The case of the petitioner is that the Dynamo Lighting Sets that are manufactured by the petitioner are parts of a cycle and as such, are eligible for exemption under the Notification No. 86/79 dated 1st March, 1979.

3. On behalf of the Respondents it has been contended that the petitioner company started manufacturing Bicycle Dynamo Lighting Set and Bicycle Horns sometime in the year 1975. The petitioner made an application to the Central Excise Authorities for granting of a licence for manufacturing Bicycle Dynamo Lighting Set and Bicycle Horns under Tariff Item No. 68 and the licence was granted accordingly. Tariff Item No. 68 is the residuary clause and will have to be contrasted with Tariff Item No. 35 as it stood before it was deleted by the Finance Act, 1979.

Tariff Item 35. PARTS OF CYCLES OTHER THAN MOTOR CYCLES NAMELY :-

(i) Free wheels,

(ii) Rims.

Tariff Item 68. ALL OTHER GOODS, NOT ELSEWHERE SPECIFIED MANUFACTURED IN A FACTORY BUT EXCLUDING :--

(a) alcohol, all sorts, including alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics; and

(c) dutiable goods as defined in Section 2(c) of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955.

Explanation.--In this Item, the expression "factory" has the meaning assigned to it in Section 2(m) of the Factories Act, 1948.

4. It has been stated on behalf of the Respondents that after the grant of the licence and in terms of the licence, the petitioner company from time to time paid Central Excise duty as applicable to the Tarrif Item No. 68 up to 1st March, 1979. By virtue of an amendment made by the Finance Bill, 1979, T.I. No. 35 of the Central Excise Tarriff was deleted. Consequently, a notification was issued on 1st March, 1979 to the following effect:--

New Delhi, the 1st March, 1979 ------------------------------------ 10th Phalguna, 1900 (Saka) NOTIFICATION CENTRAL EXCISE

GSR.

In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts cycle and parts of cycles falling under Item No. 68 of the First Schedule to the Central Excises leviable thereon as is in excess of five per cent ad valorem.

5. On 19th June, 1980 a further notification was issued by the Government of India under which "Cycles and Parts thereof " were incorporated in the Schedule annexed to the Notification No. 55/75-Central Excise dated 1st March, 1975.

6. The case of the Respondents is that the petitioner has always treated Cycle Dynamo Lighting Set as a bicycle accessory manufactured by it and did not offer the same for taxation under T.I. No. 35. It has been argued that therefore deletion of T.I. No. 35 will not be of any benefit to the petitioner. The Cycle Dynamo Lighting Sets manufactured by the petitioner are really accessories to cycles and are not eligible for exemption which has been granted to cycle and cycle parts only.

7. It has further been contended that the petitioner even after issue of the notification granting exemption to cycle and cycle parts from excise duty has been collecting excise duty on its products as cycle accessories from its customers regularly. The bills submitted by the petitioner to its customers including excise duty have been annexed to the affidavit-in-opposition in support of the case of the Respondents. It has further been contended that in any event, the petitioner has suppressed these facts in the petition and this writ petition should be dismissed in limine for material suppression of facts and mis-statements in the petition.

8. Mr. Mullick, appearing on behalf of the Respondents, drew my attention to the tariff advice given by the Central Board of Direct Taxes dated 8th June, 1981, the material part of which is set out as under :--

"3. The issue before the conference was whether Cycle Dynamo Lamp and Parts thereof could be treated as parts of the Cycle. The conference has come to the conclusion that cycle dynamo lamp is not essential for completion of manufacture of a cycle, a cycle is sold in the market even without the lamp, and that cycle dynamo lamps and parts thereof are "accessories" and not parts of cycle and hence not eligible for exemption under Notification No. 55/75-C.E., dated 1-3-1975.

4. The Board have accepted the decision of the conference."

9. Mr. Mullick drew my attention to the photographs of bicycles published in the Guide to the Bicycles and Components Industry in India which has been annexed to the petition wherein a number of photographs of bicycles of various types

were set out; not even one cycle was fitted with a lamp.

10. Mr. Bajoria, appearing on behalf of the petitioners, has contended that there were statutory regulations in many parts of the country making it essential for a cyclist to have a lighting device fitted to his cycle for the purpose of using it at night. It was argued that the cyclist was obliged under the compulsion of law to have a lamp fitted to his bicycle. It was argued that the Dynamo Lamp or some other lighting devices has to be fitted to a bicycle before it could be used at night and, therefore, it must be regarded as a part of a cycle. I am unable to accept this argument. The regulations that have been referred to by Mr. Bajoria are for prevention of accidents. The law may require certain protective devices to be fitted to a cycle for the protection of the cyclist and also for the purpose of averting accidents. These regulations, however, will not make the protective '' device a bicycle part if it was not otherwise a part of a bicycle.

11. The next contention of Mr. Bajoria is that the Dynamo Lamps have a functional value and must be regarded as a part of the bicycle. The value of a Dynamo Lamp is not ornamental. Without a lamp, a cycle cannot be used at all at night. The Dynamo Lamps have a functional utility and, therefore, cannot be regarded as an accessory. Reliance was placed to the meaning of "accessory" given in the Websters Seventh New Collegiate Dictionary where the meaning of "accessory" has been given as under :-

"(a) a thing of secondary or sub-ordinate importance; adjunct; (b) an object or device not essential in itself but adding to the beauty, convenience or effectiveness of something else."

12. Lastly, it was contended by Mr. Bajoria that the object behind granting the exemption of bicycle and cycle parts from excise duty was stated by the Finance Minister in his budget speech for the year 1980-81 in the following words :-

"The cycles are the poor man''s conveyence.

I, therefore, propose to totally exempt cycles and cycle parts falling under Item 68 from excise duty."

123 ITR 17, 29 (Statute).

13. The contention of Mr. Bajoria is that this should be liberally construed. The object was to lighten the burden of a poor man and to enable the poor man to acquire and use a bicycle at a cheap rate. If the contention of the Excise Department was correct, then all the lighting devices whether dynamo light or not will come within the mischief of the Excise Act. This will add to the price of a bicycle fitted with lamp and, therefore, such an interpretation should be avoided.

14. In my opinion, the liability to pay excise duty upon the Cycle Dynamo Lighting Sets manufactured by the petitioners will depend upon the wordings of the Excise Act and the various notifications issued by the Government from time to lime. The fact that the assessee had collected excise duty on the Dynamo Sets

manufactured by it from its customers after receiving the impugned order from the Respondents cannot be determinative of the question before us. The tariff advice given by the Central Board of Direct Taxes cannot equally be of any assistance in deciding the question whether the Dynamo Lighting Sets produced by the assessee are Cycle parts or not. This was also the view taken by this Court in the case of Kharda Co. Ltd. v. Union of India and Ors. 1981 (1) Cal 1.

15. I am also unable to uphold the argument made that the proper approach will be to find out whether the Dynamo Lighting Sets is essential for the purpose of using a cycle. If this test is applied, then a chain guard or a mud guard or, possibly, even a saddle seat cannot be regarded as a part of a cycle. Even if this test is applied, it will be seen that it is essential to have a lamp for using a cycle at night. A lamp may not be essential during the day. But can it be said that the cycle is meant to be used only during the day? It is as essential for a cyclist to have a lighting device for his cycle as it is for a motorist to have head lights for his motor car.

16. The fact that a cycle sold by a manufacturer does not usually contain a lighting device also does not resolve the controversy before us. A cycle when it is sold by the manufacturer is usually fitted with a bracket for lamp. If the test of what is actually sold by the manufacturer is applied, then a lamp bracket has to be regarded as part of a cycle but the lamp itself will be an accessory. A manufacturer may or may not provide a cycle with a chain guard or a mud guard and the cyclist may have to buy it separately. If the argument on behalf of the Excise Department is to be accepted, then if the chain guard or mud guard is provided by the manufacturer then it will not be a part. A well-known manufacturer of a Motor Car now-a-days does not provide a bumper along with the Car and it has to be bought separately by a motorist. Can it be said that since it is sold separately, a bumper has ceased to be a part of a Motor Car? This approach is wholly unsatisfactory.

17. In my opinion, none of the tests mentioned above is very satisfactory for the purpose of resolving the controversy that has arisen in this case. These tests have been applied in some cases in entirely different context of facts and law. In my opinion, the proper approach in a case like this will be to find out whether a Dynamo Lamp is regarded as a bicycle part by the people engaged in the business of manufacture and sale of bicycle and bicycle parts. The expression "Cycle and Parts of Cycles" should not be understood in any strict or technical sense. The words "Parts", "Accessories" and "Parts of Cycle" have not been defined or explained under the Statute. These words, therefore, must be understood in the popular and commercial sense. The Supreme Court has applied this test in several cases.

18. In the case of State of Uttar Pradesh and Another Vs. Kores (India) Ltd., , the question that fell for determination was whether a typewriter ribbon was a part of the type-writer. That case was decided under the U.P. Sales Tax Act. It was observed in that case "It is well settled that a word which is not defined in an

enactment has to be understood in its popular and commercial sense with reference to the context in which it occurs".

19. The Supreme Court in that case quoted with approval the following observation of Pollock J. in the case of Grenfell v. Commrs. of Inland Revenue (1876) 1 Ex. D. 242 :-

"As to the construction of the Stamp Act, I think it was very properly urged that the statute is not to be construed according to the strict or technical meaning of the language contained in it, but that it is to be construed in its popular sense, meaning, of course, by the words ''popular sense'' that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it."

I was referred to a number of commercial publications as well as government notifications and circulars to show the sense in which the term "Cycle Parts" have been understood and used in the commercial world as well as by the Government. Dynamo Lamps have not been described as "accessories" in any of these publications or notifications. The description has been either "Cycle Parts" or "Components".

20. There is a Government of India Notification No. S.O. 98(E)/IDRA/ 29-B/73/1 u/s 29B dated 16th February, 1973 under the Industries (Development and Regulation) Act, 1951. By that notification the Central Government exempted certain classes of industrial undertakings from the operation of the provisions of, inter alia, Section 10 of the Act which related to the registration of industrial undertaking. Among the undertakings mentioned in Schedule 1 of the Act under the heading "Bicycle Parts-Tricycle and Perambulator", Item 695 is ''Lamps-Bicycle'' and Item 702 is "Cycle Dynamoes".

21. The Export Inspection Council (Ministry of Foreign Trade) Government of India issued a circular letter dated 27th February, 1973 addressed to all the Manufacturers/Exporters of Bicycle and Bicycle Parts. In that letter it was stated that the goods meant for export should be in accordance with the specifications of the export contract as agreed upon between the buyers and the sellers or the relevant Indian Standard specifications issued by the Indian Standard Institution for the products. The manufacturers were directed to conform to "a minimum of specifications laid down by the Council for the twenty-eight Bicycle Parts as annexed hereto" one of which is "Dynamo and the tail Light".

22. Engineering Export Promotion Council, India also in a letter dated July 30, 1973 informed the petitioners that a special feature display was being organised in the month of September on Bicycle and Bicycle components in the U.K. A list of items were given which had scope in the U.K. market. The list was as under :-

1. Bicycle Chains 1/2''X1/8''-112-114 Links.

2. Raching Chains 1/2 X 3/32-114 Links.

3. Single and Multispeed Free Wheel.

4. Cranks.

5. Radals-Reflector Type.

6. Bells.

7. Dynamo Lighting Sets.

8. Caliper Brakes, Brake Shoes.

9. Hubs.

10. Rims.

11. Accessories.

It is significant to note that the accessories came under Item 11 and Dynamo Lighting Sets were not included in accessories but were shown as a separate item.

23. In the glossary of term used in the Bicycle Industry published by the Indian Standard Institution, Bicycle Dynamo has been mentioned under the head "Miscellaneous Components" along with, inter alia, saddle, stand, quarter chain guard, half chain guard, full chain guard and bicycle belt.

24. In the booklet, a Guide to the Bicycles and Components Industry in India published by the Trade Development Authority, Dynamo Lighting Sets have been described as one of the Bicycle Components which are available for export from India.

25. In my opinion, the phrase "Cycle and Cycle Parts" as appearing in the notification dated 1st March, 1979 must be understood in the popular sense and in the vernacular of the commercial world at the time the notification granting exemption was issued by the Central Government. The term "Cycle Parts" has be-n used by the Government in various notifications and circulars issued from time to time in a broad sense to include Dynamo Lamps. The word has not been defined in the Excise Act. There is no reason to assume that the Government intended to depart from the usual sense and used the expression "Cycle Parts" in a different and restricted sense when the notification granting exemption of "Cycle Parts" from excise duty was published on 1st March, 1979. The reason for granting exemption to "Cycle and Cycle Parts" as stated by the Finance Minister in his budget speech is that "The Cycles are the poor men''s conveyence". The exemption has been granted not only to cycles but also to cycle parts falling under Item 68 of the First Schedule of the Excise Act. The object appears to be to lighten the tax burden of a poor man. A poor man will need a lamp for using his cycle at night. There is no reason to deprive Dynamo lamps from the benefit that is sought to be granted on a supposed distinction between accessories and parts. There is no dispute that the Dynamo Lamps manufactured by the petitioner was being taxed under Item 68 as "Cycle Parts" before the notification

was issued.

26. There are certain other significant features in this case. The petitioner was granted licence for manufacturing bicycle parts under Item No. 68 by the respondents. The relevant entry in the licence under Central Excise Rules is "The privilege conferred by this licence extends only to the manufacture of goods M. Es. fitting under T.I. 68 Dynamo Lighting Sets, Bicycle Horns, Tools and other cycle parts." The petitioner was also directed to use Code 19 for filing its return which is a code number relatable to cycle. In the letter written by the Assistant Collector of Excise dated 28-8-1975 which is an annexure to the Supplementary affidavit the petitioner was directed to pay duty on Tariff Item No. 68 on the articles manufactured by the petitioner and not under Tariff Item No. 35. A large number of documents have been annexed to the petition showing that the Customs authorities as also the Excise authorities, from time to time, have treated the goods manufactured by the petitioner or similar goods manufactured or imported by others as bicycle parts.

27. It will, therefore, appear that the term "Cycle Parts" has been used broadly in the trade circle and also in the Government Departments. As has been noticed earlier, the term has also been broadly used so as to use Dynamo Lamps in various Government publications, notifications and circulars. There is nothing to indicate that the Government intended to depart from the sense in which the term has been used when the notification dated 1st March, 1979 was issued.

28. It must be borne in mind that in a taxing statute if two interpretations of a term are possible, the one more favourable to the tax payer must be preferred. I am, therefore, of the view that the expression "Cycle and Parts thereof" will include "Cycle Dynamo Lighting Sets" manufactured by the petitioner.

29. Mr. Bajoria in his usual fairness, drew my attention to an unreported Single Bench judgment of the Madras High Court in the case of T.I. Miller Limited v. Union of India and Ors.-W.P. No. 1024 of 1981 which was delivered on 20th July, 1983. In that case, it has been held that "I am of the opinion that the stand of the revenue is right. What is important is whether cycle can be sold commercially without dynamo. Or again, to put the proposition differently if the cycle could function without the dynamo. Certainly, the dynamo cannot be a part."

30. In my opinion, whether a cycle can be sold commercially without a dynamo or not is not really decisive of the point at issue in this case. The question is whether the expression ''cycle or parts thereof includes a dynamo lamps manufactured by the petitioner. At the time when the notification was issued in the commercial circle a dynamo lamp was regarded to be a part or a component of a cycle. The Government in its various notifications and communications has also used the term ''Cycle Parts'' in a broad sense so as to include dynamo lamps. There is no reason why a different or restricted meaning should be assigned to that expression in the notification dated March, 1979. The learned Judge has relied upon the judgment of the Supreme Court in the case of State of

Uttar Pradesh and Another Vs. Kores (India) Ltd., and has held that "It is well settled that a word which is not defined in an enactment has to be understood in its popular and commercial sense with reference to the context in which it occurs."

31. 1 am in agreement with the learned Judge that the popular and commercial sense has to be accepted and from the materials and documents that have been produced before me, I have no hesitation in holding that in the commercial and popular sense that Dynamo Lamps must be regarded as "cycle parts". A manufacturer may or may not provide lamps when the cycles are sold. What the manufacturer provides, in my opinion, is not really the decisive test. I fail to see why a tail lamp will be part of a Bicycle because a manufacturer provides it, but a Dynamo Lamp will be a part only because it is not provided by the manufacturer.

32. I was referred to a large number of decisions in course of arguments. These decisions do not advance the case of the respondents in any way. In the case of The Deputy Commissioner of Agricultural Income Tax And Sales Tax (Law), Board of Revenue (Taxes) Vs. Union Carbide India Limited, , the Kerala High Court held that the leakproof or drycell batteries could not be regarded as normally used only for transistors. Similarly, cinema arc carbons also could not be regarded as normally used only for cinematographic projectors. The Kerala High Court held that the commodities were neither accessories nor parts. In deciding this case, the Kerala High Court referred to the judgment of the Supreme Court in the case of Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, wherein it was held that "It is now well-settled that while interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or the technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them that is to say, to their commercial sense."

33. In my opinion, the decisions on the cases of Amkar Engineering Works Vs. Superintendent of Central Excise, and International Tractor Co. of India Ltd. v. Union of India and Ors.-(1911) I Excise Law Times 133 do not throw any light on the controversy before us and it is not necessary to deal with those cases in detail. In my opinion, it is not necessary to go into the dispute as to what is a part and what is an accessory. The phrase "Cycles and Parts thereof" has been used by the Government in various circulars and notifications. The Dynamo Lamps has never been mentioned as an accessory in any Government notification. The Respondents have failed to produce any notification or statute or circular issued by the Government wherein Dynamo Lamps or any other lamp of a cycle has been described as "accessory". There is no reason to give the phrase "Cycles and Parts thereof" a restricted meaning in the notification dated 1st March, 1979.

34. In that view of the matter, this petition succeeds and the rule is made absolute.

35. Let a writ in the nature of Mandamus be issued commanding the respondents to withdraw, cancel and/or rescind the purported Trade Notice No. 149/Goods-N.E.S.-27/1968 dated June 15, 1981 (Annexure E) and letter No. V (30) 68/23/ Cal-XIII D/81/1624 dated June 25, 1981 (Annexure F) and not to initiate and/or pursue any proceedings in relation thereto and not to levy any duty under the Central Excises and Salt Act and/or rules framed thereunder as proposed in the impugned notice and letter and to act in accordance with law.

36. There will be no order as to costs.

37. The petitioner''s advocate will be at liberty to release Rs. 1000 from the amount lying deposit with him pursuant to the order dated July 13, 1981 and appropriate towards the cost he has already incurred. The order of bank guarantee is also discharged.

