
(1991) 07 BOM CK 0092

In the Bombay High Court

Case No : Writ Petition No. 1720 of 1983

Kulkarni Black and Decker Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 26-07-1991

Acts Referred:

Central Excises and Salt Act, 1944 — Section 36
Constitution of India, 1950 — Article 226

Citation : (1991) ECR 377 : (1992) 57 ELT 401

Hon'ble Judges : M.L. Pendse, J;A.V. Savant, J

Bench : Division Bench

Advocate : Shri A. Hidayatullah, Mr. D.B. Shroff, Mr. M.P. Baxi and Mr. P.D. Shah, instructed by M/s Manilal Kher Ambalal and Co, for the Appellant; Shri R.V. Desai, for the Respondent

Judgement

Pendse, J.—The petitioner is a Company incorporated under the Companies Act, 1956, and carries on business of manufacturing electrically operated hand tools. The integral components of power tools are certain parts known as rotors and stator which are assembled in power tools so as to form the driving mechanism of the tools. A typical power tool has a gear box attached to a rotor at one end and is fixed at the other end to the body of the power tool. The rotor turns inside a stator and which is fixed inside the body of the tool. The rotor and stator assembly when energised with electric current produces a driving force which in turn drives the gear box and produces a motion in the gear box. The rotor and stator assembly forms driving mechanism of electrically operated power tool and is referred to as "a motor". The rotor and stator were classified by the petitioners as parts of electric motors and designated as "wheel motors" and "work motors". The "wheel motors" and "work motors" were classified under Tariff Item No. 30 of the First Schedule to the Central Excises and Salt Act, 1944 for over several years prior to May 1978. Tariff Item No. 30 reads as follows :

"Item No. 30 - Electric Motors

----- Description	Rate	of	duty	Item (1)	Tariff (2)	No. (3)
-----				30.	Electric	
motors, all sorts; and parts thereof, namely :- A. x x x x B. x x x x C. x x x x D. Parts of electric motors Twenty per cent ad valorem."						

On May 28, 1978, the Company addressed letters to the Assistant Collector of Central Excise, Kolhapur claiming that the product manufactured by the Company was a power tool liable for excise duty under Tariff Item No. 51A of the First Schedule and not as an electric motor, falling under Tariff Item No. 30. Tariff Item No. 51A reads as under :

"Items No. 51A - Tools

----- Description	Rate	of	duty	Item 51A.	Tariff No.
-----				Tools, the	
following namely :- 15% ad valorem. (i) Hand tools, the following : Pliers (including cutting pliers) spanners, wrenches, files and rasps screw drivers (including ratchet 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.					

The Assistant Collector of Central Excise rejected the contention by order dated December 20, 1978 holding that the Company manufactured identifiable electric motor and "wheel motors" and "work motors" were properly classified under Tariff Item No. 30. The Company carried an appeal before the Appellate Collector of Central Excise, Bombay but the appeal ended in dismissal by order dated October 27, 1980. The Company carried Revision Application to the Central Government u/s 36 of the Act but that also met with the same fate by order dated September 25, 1982. These three concurrent orders passed by the authorities below are under challenge in this petition filed under Articles 226 of the Constitution of India.

2. Before adverting to the submission urged by Shri Hidayatullah, learned counsel appearing on behalf of the petitioners, it is desirable to set out the process which is undertaken by the Company for manufacture of the disputed items. The Assistant Collector in a very careful and exhaustive order, which was passed after visiting the factory and collecting relevant material from the petitioners, has set out the process leading to the manufacture in detail. The parts and components used in the manufacture of "wheel motors" and "work motors" are :-

- (1) Stator.
- (2) Rotor.
- (3) End Bracket.
- (4) Shaft for Rotor.
- (5) Bearings.
- (6) Brush holders.
- (7) Carbon brushes.
- (8) Spindle.
- (9) Pulley, and
- (10) Housing, in which the Electric Motor assembled from the above parts is housed and one single article brought into existence. The electric motor so brought into existence is then tested and after successful test, fitted on to the tool. This assembly of 10 parts is nothing but an electric motor and is a prime mover which forms an important unit of the tool manufactured by the Company.

When these motors are connected to electric power, the mechanical energy produced by the electric motor is transmitted through the spindle and the pulley systems to rotor the pump and/or the grinding wheel of the tool. Thus, the electric motors convert the electrical energy into mechanical energy and, therefore, the electric motor is a prime mover. The mechanical energy produced by the conversion of electrical energy by the motors is transmitted through the spindle and pulley mechanism to run the pump and/or the grinding wheel.

The Assistant Collector held that apart from what was gathered by visit to the factory, the test charts maintained by the Company establish that the electric motors are described as work motors and wheel motors. The test charts for SDO - 150 Value master prefacer is also on file. It is clear that the speed of the wheel motor and the speed of the work motor are recorded in RPMs indicating thereby that the motors are prime movers. The Assistant Collector also relied upon the pamphlet published by the Company describing the manufactured articles as motors, viz. "work motor" and "wheel motor". The Assistant Collector also studied the manufacturing process of electrical motors in some other factories in Kolhapur Division and found that base-plate, connector box and magnetic starter, as claimed by the Company are not essential and motor can work without these accessories.

3. The first submission urged by Shri Hidayatullah is that the Assistant Collector was in error in rejecting the claim of the Company by relying upon the personal observations made during the visit to the factory. It was urged that the personal observations of the Officer cannot determine the classification of the goods and in support of the submission reference was made to the decision of the Single Judge reported in Advani-oerlikon Ltd. and another Vs. Union of India and

others, . The submission is not correct. It is undoubtedly true that the Officer cannot base his conclusion solely upon the observations made during visit to the factory as normally, the Officer adjudicating the case is not necessarily expert in the process of manufacture. In the present case, the Assistant Collector has passed order of adjudication not merely on the strength of observations made during the visit but on several other circumstances. Indeed, we appreciate the action of the Assistant Collector in visiting the factory to ascertain, before determination, as to what is the exact process of manufacture. The Assistant Collector has cumulatively taken into consideration the various circumstances to reach the conclusion that the disputed article manufactured by the Company is liable to excise duty under Tariff Item No. 30 of the First Schedule. Shri Hidayatullah then submitted that the Assistant Collector was in error in relying upon the irrelevant material like pamphlets published by the Company describing the article as motors. It was contended that the advertisement, publicity material and pamphlets issued by the manufacturer are irrelevant material for deciding the classification of the goods and in support of the submission reference was made to the decision reported in *Leukoplast (India) Private Ltd. and others Vs. Union of India and others*, . We are unable to accede to the submission that the pamphlets issued by the Company is irrelevant material. The classification cannot be based only upon what is stated in the pamphlets but the contents of the pamphlets are certainly one of the relevant circumstance which can be taken into consideration while determining classification. Shri Hidayatullah then submitted that the authorities below were impressed by the fact that 50% production of rotors and stators is sold as spares and, therefore, the rotors and stators are parts of electric motor and liable to duty under Tariff Item No. 30. We are unable to find any merit in the submission that the circumstance taken into consideration by the authorities below was not relevant. As mentioned hereinabove, Tariff Item No. 30 refers to Electric motors, all sorts and parts thereof and Item No. 30-D specifically refers to parts of electric motors. The authorities below also held that the Company claimed set off of the countervailing duty at the time of import on the stator and rotor and that would establish that the same are parts of electric motors. Shri Hidayatullah submitted that claiming set-off of the countervailing duty at the time of import was a mistake committed by the Company and such mistake would not operate as estoppel while determining classification. The submission overlooks that the authorities below have not taken this factor into consideration to conclude that the company is estopped from claiming that Tariff Item attracted is not Item No. 30 but Tariff Item No. 30 but Tariff Item No. 51A but for the purpose of ascertaining whether the claim made by the Company that the product manufactured is not electric motor is correct or otherwise.

4. The principal contention urged by Shri Hidayatullah is that the Company led evidence of trade understanding by production of affidavits of dealers and persons familiar with the goods to establish that the goods did not constitute electric motors or parts of electric motors but were the integral parts of the hand

tool and this evidence was totally ignored by the authorities below. Shri Hidayatullah submitted that the only relevant test in interpreting the meaning of the words used in the First Schedule is a popular meaning and understanding of a particular word by the trade. It was contended that resort cannot be had to the scientific or technical meaning of such terms but only to their popular meaning or the meaning attached to such terms by those dealing in them i.e. the meaning understood in the commercial sense. Shri Hidayatullah submitted that the authorities below ignored the affidavits filed by the petitioners of experts and dealers and proceeded to conclude by relying upon scientific or technical meaning and, therefore, the orders stand vitiated. It is not possible to accede to the submission of the learned counsel for more than one reason. In the first instance, the Company did not produce any affidavits or reports of experts to establish that the goods did not constitute parts of electric motor before the Assistant Collector. The idea of relying upon the alleged trade meaning occurred at a very late stage. Before the Appellate authority, the Company produced certificate issued by the Vice-Principal of Walchand College of Engineering, Sangli. The certificate, inter alia, recites that the claim of the Company that the workload sub-assembly cannot be put to use as a conventional electric motor for driving any appliance is correct. After the Company failed to get any relief from the appellate authority while filing the revision application before the Government of India, the Company decided to produce affidavits of persons claiming to be experts and also affidavits of four dealers to claim that the manufactured goods are not known in commercial or trade parlance as motors or parts of electric motor. It is, therefore, obvious that the production of reports by experts and traders is clearly an after-thought. Shri Desai, learned counsel appearing on behalf of the Department, very rightly submitted that the revisional authority was not bound to examine fresh evidence produced for the first time in revision application and no fault can be found with the revisional authority for not examining the contents of the affidavits.

Though the revisional authority was not bound to examine new evidence produced for the first time in revision, we proceeded to consider the contents of the affidavits filed by the so-called experts and traders to ascertain whether there is any merit in the contention of the Company. Shri Vishweshwar Vishwanath Badave claiming to have specialised in design and manufacture of electrical equipment and conversant with the working of power tools and spare parts has filed affidavit sworn on April 20, 1981 and it is claimed that rotors and stators are integral components of power tool known as "Portable Electric Drill Machines, Portable Electrical Grinders etc.". The affidavit further recites that an electric motor as commercially and technically known is one which can be used without any modification in its external form for driving a mechanical system. The affidavit further states that the rotor and stator assembly in the power tools is not understood or known or called either technically or commercially as an "electric motor". Affidavit of Ramachandra Subrao Tilwalli who is a teacher of electrical engineering is also filed and which is almost similar to the affidavit of

Shri Vishweshwar Badave. We are not impressed by the claim made in these two affidavits. We are not prepared to accede to the claim of Shri Hidayatullah that these two affidavits should be relied upon to uphold the claim made by the Company that the products manufactured are not parts of the machine liable to duty under Tariff Item No. 30. In our judgment, the affidavits are filed only with..... to support the claim of the Company which was turned down by the Assistant Collector and the appellate authority. We are not prepared to accept the claim made in the affidavits as gospel truth and, in our judgment, the affidavits are clearly sponsored at the behest of the Company.

Shri Hidayatullah then referred us to the affidavit filed by Shri S. L. Varma, managing partner of M/s. Continental & Eastern Agencies. Shri Varma claims to be a dealer in electrical power tools and spare parts of the petitioner Company. Varma claims that the rotor and stator assembly is not known to the customers in the market or amongst persons dealing in power tools and spare parts as an electric motor or parts of an electric motor. Varma further claims that in the market, electric motor means something different from the rotors and stators manufactured by the petitioner Company. It is further claimed that electric motors are a distinct working unit of their own and have an existence independent of any tools. The affidavits, on similar lines, are also filed by Shri Nivritti Kole, Shri Pradip Bhalwankar and Shri M. G. Yacoob who are traders in power tools. Shri Hidayatullah submitted that these affidavits of dealers should be accepted to conclude that the products manufactured by the Company are not known in the trade circles as parts of electric motor. We are unable to find any merit in the submission as we are not inclined to place any reliance upon the contents of affidavits which are similar in nature or almost identical and which were secured only for substantiating the claim before the revisional authority. Such affidavits cannot determine the issue of classification.

5. It is now well settled by catena of decisions of the Supreme Court and this Court that it is not permissible to take into consideration the trade meaning or commercial nomenclature when the definition provided in the statute is extremely clear and does not suffer from any ambiguity. In case where the application of commercial meaning or trade nomenclature runs counter to the statutory context in which the word is used in the Tariff Item, then the trade meaning or commercial nomenclature should be ignored. Reference can be usefully made in this connection to the decision of the Supreme Court in the case of Akbar Badrudin Jiwani of Bombay Vs. Collector of Customs, Bombay, In our judgment, the words in Tariff Item No. 30 are extremely clear and there is no manner of ambiguity. It is, therefore, futile to suggest that the products manufactured by the Company are not parts of electric motors and the authorities below should have ascertained how the products are known in the commercial circles. In our judgment, the revisional authority was perfectly justified in ignoring the trade or commercial understanding of the goods which was tried to be relied upon for the first time before the revisional authority. Apart from the fact that the affidavits relied upon by the Company are not of any

value, in our judgment, on the facts and circumstances of the present case, it is not permissible to refer to the commercial or trade understanding of the goods as the meaning of the words in Tariff Item is extremely clear. In our judgment, the complaint made by Shri Hidayatullah that the revisional authority was not right in ignoring the affidavits filed is misconceived and is required to be turned down.

It is now well settled that in cases of classification where two views are possible, it is not permissible to disturb the view taken by the authorities while exercising jurisdiction under Article 226 of the Constitution of India. In the present case, in our judgment, the only view possible is that the items manufactured by the Company are classifiable under Tariff Item No. 30 as done by the Company for over several years. Even assuming that the other view is possible, we decline to exercise our writ jurisdiction to disturb the concurrent findings recorded by the three authorities below. In our judgment, the petitioners are not entitled to any relief and the petition must fail.

6. Accordingly, rule is discharged with costs.