

(1979) 10 BOM CK 0003

In the Bombay High Court

Case No : Writ Petition No. 1601 of 1975

Materials Handling Engg. Co.

APPELLANT

Vs

M.G. Waknis, Superintendent of Central Excise and Others

RESPONDENT

Date of Decision : 17-10-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1989) 22 ECR 474

Hon'ble Judges : Pendse, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Pendse, J.—The question which falls for determination in this petition filed Article 226 of the Constitution of India, is whether the seven items manufactured by the petitioners are liable to excise duty under Tariff Item No. 40. The 7 items are (1) Metal Tube Trolley, (2) Mini Trolley, (3) Trolley Structure (frame), (4) Gas Trolley, (5) Storage Bins, (6) Stainless Steel Pump Stands and (7) Box with door.

2. The petitioners M/s. Material Handling Engineering Co. is a small unit employing about 4 or 5 workers. The petitioners are manufacturing the items in their factory situated in Bombay. The Tariff Item No. 40 of the First Schedule to the Central Excises and Salt Act provides for levy of excise duty on steel furniture. The Item reads as under:

Steel furnitures made partly or wholly of steel, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power whether in assemble or unassembled condition and parts of such steel furniture (but excluding allotted angles and channels made out of steel).

3. The petitioners received a show cause notice dated July 3, 1972 to show cause why a penalty should not be imposed for the violation of Rule 174 of the Central Excise Rules, 1944. The violation alleged was that the petitioners manufacture clear excisable goods falling under Tariff Item No. 40 without obtaining the

necessary L-4 licence and without following the procedure laid down in the Central Excise Rules. The petitioners gave a reply on August 1, 1972 claiming that none of the articles manufactured by them are liable to excise duty under Tariff Item No. 40. The petitioners also received a letter dated April 9, 1973 from the Collector of Central Excise calling upon the petitioners to obtain L-4 licence as the manufacture of the articles by the petitioners are liable to excise duty under Central Excise Act. The petitioners claim that the articles manufactured by them are not liable and the Assistant Collector of Central Excise by order dated November 28, 1974 held that the seven items are excisable and the petitioners should take out the licence in form L-4 under Rule 174 of the Central Excise Rules. The seven items manufactured by the petitioners can be divided in four categories. The first four items are Trolleys while the remaining three are Storage Bins, Stainless Steel Pump Stands and Box with door. The Assistant Collector in his order dated November 28, 1974 observed that all these articles are excisable because they are included in the list of dutiable articles in the notification dated July 9, 1968. The Assistant Collector did not accept the contention of the petitioners that none of these articles can be described as articles of furniture. The petitioners carried an appeal against the order passed by the Assistant Collector but the appeal ended in dismissal by an order dated December 31, 1975. The Assistant Collector also held the petitioner guilty for not taking due licence and for clearing the goods without payment of duty and by separate order dated December 13, 1974 imposed a personal penalty of Rs. 250/- on the petitioners. The Appeal preferred by the petitioners against that order was dismissed by the Appellate Collector, Central Excise, Bombay by his order dated September 30, 1975. The orders passed by the Central Excise Authorities holding that the seven items of articles manufactured by the petitioners are liable to excise duty and imposing the penalty are under challenge in this petition filed under Article 226 of the Constitution of India.

4. Mr. Korde appearing in support of the petition, submitted that the Classification Order was passed by the Assistant Collector purely on the basis of the Notification bearing No. M.F. (D.R. & I) F. No. 33/44/68 CX. VII dated July 9, 1968. The learned Counsel submitted that this notification, which is included in "Central Board of Revenue Bulletin?July-September 1968 on page 409 states that:

In order to achieve uniformity in the assessment of items of steel furniture covered by tariff item No. 40, seven lists covering dutiable items have been preferred and the same are appended for guidance. While the lists cover most of the items liable to duty they should not be treated as exhaustive.

Mr. Korde has taken me through all the seven lists which deal with chairs and other seats, tables, beds and cots, stands, racks, cabinets and Almirahs and Trolleys. The perusal of this list leaves no manner of doubt that the articles included are household articles or the articles which are used as items of furniture in the clinic of a Doctor or a Dentist. Each and every item included in

this list are household articles which are used as an item of furniture. This list, though not exhaustive, is clearly an indication of the fact that what the Department understood by Tariff Item No. 40 are the articles of steel which can be described as items of furniture. Mr. Korde is right in his submission that the plain reading of Tariff Item No. 40 makes it clear that articles liable to excise duty must be articles of furniture. This notification, in my judgment, instead of supporting the conclusion arrived at by the Assistant Collector, supports the claim made by the petitioner.

5. In the present case, the items which are held to be liable to excise duty are Metal Tube Trolley, Mini Trolley, Trolley Structure and Gas Trolley. It is not in dispute that these items though described as Trolleys are not the ordinary trolleys which are used in household or in the clinic by a Doctor. The affidavit-in-rejoinder filed by the petitioners gives a clear picture of the disputed articles, and it is obvious that though the articles are [described as trolleys they are used only in the factories for the purpose of Shifting the goods from one place to another. By no stretch of imagination these articles can be described as the articles of steel furniture. The word "furniture" has got a peculiar connotation and indicates that the article can be used for the convenience or comfort of a human being either in the house or in the office. In regard to item Storage Bins and Stainless Steel Pump Stands and Box with Door, it is equally clear that these are not the articles which are used as items of furniture. Mr. Korde is right in his submission that merely because the articles manufactured by the petitioners resemble a cupboard or an irrigator stand or a metal container is not sufficient to describe them as articles of furniture. It is obvious that the Assistant Collector was more impressed by the nomenclature given to the articles than to determine whether it is an item of a furniture. In my judgment, the view taken by the Assistant Collector is clearly erroneous and the reliance on the Notification was totally wrong. It is not in dispute that the expression "steel furniture" is known in common parlance as an article devised for giving comfort to a human being. The seven articles manufactured by the petitioners do not satisfy that test and the order of the Assistant Collector and the "Appellate Authority holding contrary is clearly erroneous and cannot be sustained. The petitioners are, therefore, entitled to the relief claimed in the petition.

6. Accordingly the petition succeeds and the rule is made absolute in terms of prayer (a) of paragraph 30 of the petition. There will be no order as to costs.