(1978) 03 MAD CK 0031

In the Madras High Court

Case No : Writ Petition No''s. 6155 and 6359 of 1975

Mill Stores Pvt. Limited APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 06-03-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1979) 4 ELT 9

Hon'ble Judges : Mohan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohan, J.—Both these writ petitions can be dealt with under a common judgment and it is enough to note the facts in W.P. No. 6155 of 1972 alone, since the issue involved is the same excepting that two different petitioners have approached this court.

2. The petitioner made an import of pillow blocks from the United Kingdom under a relevant bill of entry. The imported pillow blocks are of Fafnir make. It consists of a housing and a bearing. These blocks are complete with integral bearing which are inseparable. The appraising department of the Madras Customs classified the imported goods under item 72 (35) of the Indian Customs and Central Excise Tariff (hereinafter referred to as the Tariff) which reads as ''ball bearings of all kinds not exceeding 51 millimetres bore diameter adopted for use as parts and accessories of motor vehicles (other than motor cycles and motor scooters) and parts thereof, not otherwise specified. The contention of the petitioner was that it should be assessed under item 72 (3) in which event the duty chargeable would be 40 per cent ad valorem, while if it was charged under item 72 (35) of the Tariff, the duty would be 100 per cent. The contention of the petitioner was negatived by the Deputy Collector of Cutsoms, Appraising Department, by an order dated 8-4-1973. Aggrieved by that order, the petitioner preferred an appeal to the Appellate Collector of Customs (second respondent).

The second respondent passed an order dated 12-10-1973, rejecting the appeal. Thereupon, the petitioner preferred a revision to the first respondent. The first respondent confirmed the order of the second respondent. It is against these orders, the present writ petition has been preferred on the following among other grounds.

3. The respondents ought to have seen that the goods imported are pillow blocks complete with integral bearings which are inseparable from the housing and that the bearing has no independent use except as an integral part of the pillow blocks. Therefore, the fact that bearings are separately sold is irrelevant for the consideration of the issue in question, as such bearings which are separately available in the market can be fixed only to the main housing of the make and not for any other machinery.

4. The respondents ought to have seen that the pillow blocks of Fafnir make are made in such a way that the bearings arc integral part of the main machinery unlike products of certain other makes, for instance, Me. Gill precision bearings produced and demonstrated before the respondent.

5. The respondents ought to have seen that the mere fact that the bearings can be physically separated from the housing by applying force is not a valid reason to conclude that the imported goods are pillow blocks with detachable bearings.

6. The respondents ought to have seen that even the respondents No. 2 has found that the two articles (housing and bearings) have no separate values and that itself shows that the bearing is an integral part of the pillow blocks.

7. The respondents erred in thinking that the petitioner was relying on ''post importation documents''. The documents produced came into existence before the clearance of the goods and therefore cannot be ''post importation documents''.

8. In the counter affidavit of the respondents it is stated as under : -- The imported pillow blocks are not of integral type and the bearings are separable from the housing. It cannot be stated that the bearings of the pillow blocks have no independent use except as an integral part of the pillow blocks. The fact that the bearings are separately available for replacement is very relevant here and these bearings are capable of use as such in addition to their use after fitment in the pillow blocks, in machinery.

9. Fafnir pillow blocks are different from that of the Mc. Gill (precision bearings) pillow blocks. In the case of Mc, Gill bearings, the bearings are detachable by means of 2 screws, whereas in the case of Fafnir bearings, there are no screws but the bearings arc detachable by a little force. Thus both the types and pillow blocks have detachable bearings. The fact that the detaching of either one of the items, viz, bearings and housing from the other renders both of them functionally unfit does not mean that the bearings are not detachable. For that matter if two parts forming together a complete whole are detached, one of them

may be functionally unlit for use individually. The certificate does not conclusively prove the point sought to be emphasized by the petitioner. The letters and certificates of the manufacturers and their agents in India and the catalogue and the literature pertaining to the machinery in question have been examined in detail and have been taken into consideration before a decision was given in the case. The fact that the relative invoice does not give the separate value of the bearing and housing will not in any way establish that the bearing is an integral part of the pillow blocks. From the other documents it has been proved that the bearing is detachable from the housing. Both the letter from the suppliers M/s. Fafnir Bearing Co., U.K., dated 5-3-1973 andTest Report dated 23-2-1973, from the Principal, College of Engineering, Guindy, have been issued after the date of importation in 1972, and it was correctly held that these were post importation documents and hence cannot be solely relied upon as evidence, unless other corroborative evidence was also available. In any event, it is submitted that the question whether the bearings in question are detachable or not and the classification of particular goods under a particular entry in the Customs Tariff are all questions of fact which are purely within the exclusive jurisdiction of these respondents to decide. It is submitted that the decision taken by the third respondent cannot be said to be perverse and the petitioner cannot challenge the decision of the respondents on questions of fact in proceedings instituted under Art. 226 of the Constitution.

10. Mr. B.R. Dolia, learned counsel for the petitioner, reiterating the various grounds urged in support of the writ petition, contends as follows : -- The impugned order proceeded mainly on the basis of detachability. That itself is a wrong approach. When the import itself was pillow block, it is an integral part. The fact that one such part has a ball-bearing cannot enable the respondents to classify it under item 72 (35) of the Tariff. Properly speaking, it is item 72 (3) that would govern. Then again, what requires to be noticed is the separation of the ball bearing would render both the detached part functionally unfit. Nor again the replacement bearings are available would be a relevant criterion. Hence, the assessment of Pillow Blocks housing under item No. 72 (3) of the Indian Customs and Central Excise Tariff and the ball bearings under item No. 71 (35) read with item 49 of the Tariff is totally incorrect.

11. Mr. Chengalvarayan, learned counsel for the respondents, draws my attention to the meaning of ''detachable'' as found in the Words and Phrases and say so long as ball bearings could be removed with some force, it cannot be held to fall under item 72 (3) as contended by the petitioner. Even the literature of the manufacturer supports the contention of the respondents. Therefore, the impugned orders are unassailable.

12. Mr. Dolia, in reply, draws my attention to the judgment rendered in Tuffite Plastics (P) Ltd. v. Union of India, Ministry of Finance, New Delhi -- 1978 E.L.T. 509 and states that in commercial world ''pillow blocks'' are never understood or sold as ''ball bearings''.

Having regard to the controversy, it is necessary for me to extract item 72 (3) and item 72 (35) of the Indian Customs and Central Excise Tariff.

Item 72 (3) of the First Schedule reads:

Item Name of article Nature Standard No. of duty rate of duty 72(3) Component parts of machinery as defined in item Revenue 40% ad Nos. 72, 72 (1) and 72 (2) and not otherwise valorem. specified, namely, such parts only as are essential for the working of the machine or apparatus and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose but excluding small tools like twist drills and reamers, dies and taps, gear cutters and hacksaw blades :

Provided that articles which do not satisfy this condition shall also be deemed to be component parts of the machine to which they belong if they are essential to its operation and are imported with it in such quantities as may appear to the Collector of Customs to be reasonable.

Item 73 (35) is as follows : Item Name of article Nature Standard No. of duty rate of duty 72 (35) Ball bearings (including adapter ball bearings) not Revenue 100% ad exceeding 60 millimetres bore diameter. valorem.

13. The pillow blocks are component parts of the machinery is not denied. It is used as a transmission equipment. It is also not denied that these pillow blocks are of Fafnir make. The ball bearing is housed. It forms an integral part. As opposed to this, there is another make, viz. Mc. Gill precision bearings. In that case of Mc. Gill bearings, the ball bearings could be detached by means of two screws whereas in the instant case, there are no screws. The respondents would have it that by application of little force, the ball bearings become detachable. Therefore, according to them, the housing would be a component part assessable under item 72 (3) while ball bearings would fall under item 72 (35) of the Tariff. The meaning of the word ''detachable'' has come to be laid down in Words and Phrases, Volume 12, at page 454 as follows : --

"Detachable : In a claim for a patent declaring the same to be the combination of a torpede, a detachable clip, means for attaching it to the torpedo, and a wire for attaching the clip to the rail, substantially as shown, a removable clip was meant, or one which was not positively attached to, and virtually made a part of, the torpede shall by reverting or soldering; one which, while it accomplished connection, did not create union. Bonnett v. Schooley -- 75 F. 392. A patent called for a coffee or similar mill having a detachable hopper and grinding shell formed in a single piece, and suspended within the box by the upper part of the hopper or a flange thereon. Held, that the word ''detachable'' as so used, did not necessarily imply that the hopper must possess the capacity of being detached from the top of the box; the object contemplated being rather that the hopper might be easily detachable from the box, since by the terms of the claim the hopper and grinding shell, formed in a single piece, are suspended within the box by the upper part of the hopper or a flange thereon. Strobridge v. Lindsay, 2 F.

692."

14. From the above, it will be clear that if it is to be held as detachable, it must be easily detachable from the Pillow Blocks, not by use of force. Then again, the housing unit as well as the ball bearings are rendered functionally unfit after the ball bearings are detached. Certainly, in the commercial world to any person seeking to buy a ball bearing would not go in for pillow blocks. Nor again, can the pillow blocks be called or sold as ball bearings. On the same line of reasoning, I should hold merely because replaceable ball bearings are available for these pillow blocks, it cannot cease to fall under the category of pillow blocks. Certainly replacements are available for every part of the machinery. It is not a pedantic approach that should be taken in matters of this kind. When I say this, I am not unaware of the law laid down by the Supreme Court, which gives a wide discretion to the department with regard to the classification of an item, but where the above essential aspects have been lost sight of, I cannot but consider the view of the department to be perverse. In such cases, this court certainly can interfere as laid down in the The Collector of Customs, Madras Vs. K. Ganga Setty, . The essential features that have been lost sight of by the department are --

(i) The important distinction between Mc. Gill precision bearing pillow blocks and Fafnir, the former being detachable by means of screws while the latter forming one integral block,

(ii) Detachability not by some means or other nor by use of force but detachable ordinarily.

(iii) Once detached, both the components are rendered functionally useless.

(iv) The availability of replacement is not a point to be put against the petitioner.

(v) How in the commercial world the commodity is understood and sold ?

15. Therefore, I am unable to agree with the findings of the respondents, that the housing block is to be assessed under item 72(3) while the ball bearings which is housed inside the pillow blocks would be assessed under item 72(35) of the Tariff.

16. Hence, the impugned orders are hereby quashed and the writ petitions will stand allowed. I make it clear that the pillow blocks are assessable under item 72(3) as an integral part and not as the individual units. However, there will be no orders as to costs.

