

(1988) 01 SC CK 0049

In the Supreme Court Of India

Case No : Civil Appeal No. 2860 of 1987

Nat Steel Equipment Pvt. Ltd.

APPELLANT

Vs

Collector of Central Excise

RESPONDENT

Date of Decision : 19-01-1988

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A, 35L

Citation : AIR 1988 SC 631 : (1988) 15 ECC 457 : (1988) 15 ECR 1 : (1988) 34 ELT 8 : (1988) 1 JT 228 : (1988) 1 SCALE 214 : (1988) 1 SCC 605 : (1988) 2 SCR 732 : (1988) 69 STC 58

Hon'ble Judges : Sabyasachi Mukherjee, J;S. Ranganathan, J

Bench : Division Bench

Final Decision : dismissed

Judgement

Sabyasachi Mukharji, J.—This is a statutory appeal from the decision and order of the Customs Excise and Gold (Control) Appellate Tribunal (briefly referred to as 'CEGAT') u/s 35L of the Central Excise and Salt Act, 1944 (hereinafter called 'the Act'). It appears that the appellant is a manufacturer of Hospital and Pharmaceutical Appliances and Heavy Duty Industrial Canteen Equipment. The following 14 items were classified by him under Tariff Item No. 68 of the said Act in his Classification List No. 106 dated 27.3.1979:

1) Storage Tank (2) Cooking Range (Electric operation and gas operated) (3) Baking Oven (4) Deep Fat Fryer (5) Bain Marie (6) Sterilizing Sink (7) Espresso Coffee Machine (8) Steam Jacketed Vessel (Steam Operated) (9) Bread Toaster (10) Bulk Cooker & Fryer (11) Chappatty Plate/Chap patty Puffer and Chappatty Plate/Puffer (12) Dish Washing Machine (13) Potato Pooler and (14) Masala Grinder.

2. The Assistant Collector held the view that products 2 to 14 were classifiable under Tariff Item No. 33C in view of the Explanation thereof. After giving notice the Assistant Collector demanded differential duty amounting to Rs. 1,91,622.20 for the period 1st of March, 1979 to 30th June, 19 80. The Assistant Collector

confirmed the demand except in respect of Item No. 8, namely, Steam Jacketed Vessel.

3. Being aggrieved from these orders, the appellant filed appeals before the Collector. The Collector accepted the appellant's contentions and came to the conclusion that these were to be classified under Tariff Item No. 6 8 and not under Tariff Item No. 33C. Tariff Item 33C at the relevant time contained the Explanation-I, which is as follows:

Explanation-I 'Domestic electrical appliances' means electrical appliances normally used in the household and similar appliances used in hotels, restaurants, hostels, offices, educational institutions, hospitals, train kitchens, aircraft or ship's pantries, canteens, tailoring establishments, laundry shops and hair dressing saloons.

4. The revenue went up in appeal before the CEGAT. The Tribunal noted that the equipments in question were used in industrial canteens, Five Star Hotels, big hospitals etc. The nature of the items such as deep fat fryer, Espresso coffee machine, bread toaster, chappatty plate, etc. were all electrically operated machines. The Tribunal further noted that Tariff Item 33C was in respect of "domestic electrical appliances not elsewhere specified". According to the Tribunal the intention of the legislature in respect of "domestic electrical appliances" was clear from the Explanation. It is apparent that the above named items are specially designed for use in big canteens attached to industrial units, big hotels, hospitals etc. where food in bulk quantity for hundreds of people is required to be prepared and served. These required electric power exceeding 230 volts in order to have considerable capacity for preparing and serving food. Their prices ranged from Rs. 7,000/- to Rs. 1.5 lakhs. It was submitted that these are important and relevant factors for distinguishing the said items as distinct and different from those appliances which are used normally in the household. It was submitted that these heavy duty items fall outside the purview of Tariff Item No. 33C. The Tribunal was of the view that though considerable space is required for these items but space was not any criteria for determining this question. According to the Tribunal that these items could not be classified under Tariff Item No. 68. We are of the opinion that the Tribunal is right.

3. It is manifest that these equipments were electrical appliances. There was no dispute on that. It is also clear that these are normally used in household and similar appliances are used in hotels etc. The expression "similar" is a significant expression. It does not mean identical but it means corresponding to or resembling to in many respects; somewhat like; or having a general likeness. The statute does not contemplate that goods classed under the words of 'similar description' shall be in all respects the same. If it did these words would be unnecessary. These were intended to embrace goods but not identical with those goods. If the items were similar appliances which are normally used in the household, these will be taxable under Tariff Item No. 33C.

6. It appears that the Gujarat High Court in the case of *Viswa & Co. v. The State of Gujarat* 17 Sales Tax Cases 581 had occasion to consider whether electric fans are domestic electrical appliances for the purpose of Bombay Sales Tax Act, 1953. Bhagwati, J. as the learned Chief Justice then was, speaking for the Gujarat High Court observed as follows:

A domestic electrical appliance, in our opinion, would be an electrical appliance for a kind generally used for domestic purposes. It may also be used at places other than the home or the house, but that would not destroy the character of a domestic electrical appliance which attaches to it by reason of its being a kind of an electrical appliance generally used for the household. There are several electrical appliances which are generally used in the house-hold, such as electric irons, electrical sewing machines and electrical cooking-ranges which are also used in other establishments. But these electrical appliances do not therefore cease to be domestic electrical appliances. It is of course not necessary that an electrical appliance, in order to satisfy the description of a domestic electrical appliance, must be actually used in the home or the house. What is necessary is that it must be of a kind which is generally used for household purposes and if that test is applied, there is no doubt that electric fans are domestic electrical appliances and the Tribunal was therefore right in holding that they fall within entry 52 of Schedule B.

7. We agree that it is not necessary to be a domestic electrical appliance that it must be actually used in the home or the house. It must be of a kind which is generally used for household purposes. It appears to us that the types of items concerned in this appeal are generally used for household purposes and that is sufficiently good test for classification in the light of the explanation to Tariff Item No. 33C

8. In view of the fact that the Tribunal recognised that the appellant had set out all the details in the classification list and the revenue had assessed him under Tariff Item 68, the Tribunal came to the conclusion that there was no intention to evade payment of duty. Therefore, the Tribunal directed that the modification of the classification list could only be prospective and not retrospective. The Tribunal was just and right in so doing. The Tribunal was also right in holding that in the absence of any proof of suppression of fact, Section 11A of the said Act would not be applicable. The show cause notice raising a demand of duty was issued on 8th of September, 1980 and the Tribunal sustained the demand for the period 9th March, 1980 to 30th June, 1980 in respect of items 3 to 7 and 9 to 14.

9. We are of the opinion that the Tribunal was right and the decision of the Tribunal therefore, does not call for interference.

10. In that view of the matter the appeal is rejected. There will be no order as to costs.