(1978) 04 MAD CK 0018

In the Madras High Court

Case No : Writ Petition No. 3854 of 1974

Orient Tools and Gauges Ltd. APPELLANT

Vs

The Assistant Collector, Custom House and Others RESPONDENT

Date of Decision : 03-04-1978

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 3(3)

Citation : (1979) CENCUS 158 : (1979) 4 ELT 255 : (1979) ILR (Mad) 161

Hon'ble Judges : Ramanujam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ramanujam, J.—The petitioner imported a consignment of 24 numbers of projection lamps as spares for use in projection form grinding

machine. In respect of that consignment, he claimed that the lower rate of duty under item 72(3) of the Customs Tariff is leviable as those bulbs are

essential part of ''Petewe'' projection form grinding machine model P-7-S-3D. However, the goods were treated by the first respondent as electric

lighting bulbs and classified under item 60(2) of Indian Customs Tariff. The goods were cleared under protest after paying the duty demanded by

the first respondent.

2. Subsequently, the petitioner filed a petition for refund of the difference in duty between the one paid under item 60(2) and the one payable under

item 72(3) on the ground that the projection lamps imported by him will squarely fall under item 72(3) and not under item 60(2). This claim for

refund was rejected by the first respondent on 17-11-1972, stating that the assessment originally made classifying the goods as coming under item

60(2) of the Customs Tariff was in order. The petitioner filed an appeal, to the second respondent. It was however rejected on 12-6-1973.

Thereafter, the petitioner took the matter in revision to the third respondent, but without success.

3. Thereafter, the petitioner has filed the present writ petition seeking a writ of certiorari to quash the various orders of respondents 1 to 3.

According to the petitioner, the consignment of projection lamps imported by him is indispensable for the working of the grinding machine, that it

has got certain special shape and characteristics for use as projection lamps in the grinding machine and that it cannot be used for any other

purpose. It is also pointed out that the bulbs are of low voltage and its peculiar shape makes it quite unfit for use as mere lighting bulbs.

Item 72(3) of the import Tariff is as follows -

According to the petitioner, the projection lamps imported by him are component parts of the grinding machine and they are essential for the

working of the said machine and the projection lamp has got some special shape and quality which is not essential for its use for any other purpose

much less for use as lighting bulb.

4. Item 60(2) under which the projection lamps imported by the petitioners have been assessed, refers to electric lighting bulbs not otherwise

specified. According to the revenue, though the bulbs may have a special shape and quality still they can be used as electric lighting bulbs.

5. The question is under which of the two items the projection lamps imported by the petitioner will fall. As already stated, the petitioner''s case is

that the projection lamps imported by him are essential for use in the grinding machine as a component thereof and that the grinding machine cannot

be used without this projection lamp. It is also stated that though it is of low voltage i.e. 100 watts, its price is about Rs. 113 exclusive of customs

duty and other charges, and that this shows that the projection bulb is of a special character with a special shape and quality. The case of the

petitioner as to the special characteristic of the projection lamp has been accepted even by the appellate and revisional authorities.

The appellate authority in his order dated 30-7-1973 says --

The appellants have produced drawings and the extracts taken from the technical instructions of the projection grinding machine in support of their contention...The bulbs in question though of a special nature to suit a particular requirement are only projection lamps providing illumination. The

bulbs for safety mining lamps are assessable under item 60(2) I.C.T.

The revisional authority, the third respondent, also says --

They have produced a sample drawing and an extract from technical instructions of the machine. They contend that the goods are specially

designed for use in the grinding machine and are not required for general illumination and satisfy the conditions of item 72(3) I.C.T. Government

observes from the evidence produced that the impugned goods are used for illumination in the grinding machine so that the magnified projection of

the work piece on the screen is compared with the inserted magnified specified form in the grinding machine. Though the goods may have some

special characteristics, nevertheless. they remain projector lamps and are correctly classifiable under item 60(2) I.C.T. The goods, therefore,

cannot get the benefit of lower assessment under item 72(3) I.C.T.

Thus, the petitioner''s case that the projection bulbs in question have some special characteristics and are being used for illumination in the grinding

machine so that the magnified projection of the work piece on the screen is compared with the inserted magnified specified form in the grinding

machine, seems to have been accepted by the appellate and revisional authorities, but they seem to proceed on the basis that nonetheless they

continued to remain projective lamps and, therefore, they have to be classified under item 60(2) of I.C.T. According to them the projection lamps,

whatever be its special characteristics, have to be classified as item 60(2) in view of the tariff advices from the Central Board of Excise and

Customs.

6. It is true that the bulbs have been called projection lamps. But it is not possible to say that all projection lamps should be taken to come under

item 60(2) as has been held by the respondents. Projection bulbs can be of several kinds. The projection bulbs in this case are specially prepared

for use as a component or essential part in a grinding machine and therefore, they cannot be treated as coming under item 60(2) which refers to

electric lighting bulbs. The projection bulbs may come under item 60(2), if they are not otherwise provided. Item 72(3) refers to component parts

of machinery. If a projection bulb is a component parts of machinery, it is not possible to separate the projection bulb from the machinery and

classify the same as coming under item 60(2). Therefore, the main test is to find out whether the projection bulb is a component part of the grinding

machine and whether it has been given some special shape and quality which would not be essential for its use for any other purpose. In this case,

even the revisional authority finds that the projection bulbs are of special characteristics and they are to be used only in the grinding machines. If the

projection bulb is not a component part of the machinery, then it can be treated as an electric bulb coming under item 60(2). But if the projection

bulb becomes a component of a machinery, it will fall under item 72(3).

The learned counsel for the petitioner has produced the technical instruction given by the manufacturer of the projection form grinding machine, for

which the projection bulbs imported by him are claimed to be the component parts. From these instructions, it is seen that the projection lamp is

not used purely for illumination purposes but for a special purpose. In paragraph 8 of the instructions, it is stated that a blower is provided to cool

the projection lamps that the blower sucks up fresh air from the small filter at the bottom left hand side of the ventilation door and then the air is

blown directly into the lamp housing to cool the projection lamp. Under the head ''Optical equipment'' in paragraph 9 it is stated that the projection

lamp is part of the optical equipment fitted into the grinding machine and the optical part of the machine is composed of lighting device. The lighting

device substantially consists of a projection lamp of 100 watt voltage special projection lamp, which has a concentric coil for high light density and

that is fitted into a housing which is provided with cooling ribs. The projection lamp housing also contains the condenser and the light is projected

work piece by a mirror. These instructions set out above clearly indicates that the bulb is of a special nature specifically made for use as a

component part of the machinery, that the same cannot be used for the normal purpose of illumination, and that without the projection lamps with

its cooling filter arrangement, the grinding machine cannot be put to use effectively.

In The State of Tamil Nadu Vs. Binny''s Engineering Works Ltd., the question arose as to whether fuse switch boxes are component parts of

electrical goods and fall under item 41 of the First Schedule to the Tamil Nadu

General Sales Tax Act, 1959, in that case, sales of fuse switch

boxes to registered dealers for being used as component parts of electrical goods manufactured by them were held liable only to the concessional

rate of tax u/s 3(3) of the Act.

7. In the case on hand item 72(3) uses the expression ''component parts of the machinery''. It also uses the words ''use of the article as component

parts should be essential.'' Almost all the factors referred to in item 72(3) are present in this case. The projection bulbs are not only component

parts of the machinery and they are also found to be of a special shape and quality which . would not be essential for their use for any other

purpose. Therefore, in view of the findings given by the third respondent in his order dated 11th April, 1974, the projection bulbs have to be taken

to be covered by item 72(3) and hence they cannot come under the residuary clause under item 60(2). The writ petition is therefore allowed.

There will be no order as to costs. The result is, that the petitioner is entitled to the refund claimed by him.

