(1964) 05 MAD CK 0002

In the Madras High Court

Case No : Writ Appeal No. 235 of 1963

P. Orr and Sons Private Ltd., Madras APPELLANT

Vs

Collector of Customs, Madras RESPONDENT

Date of Decision : 01-05-1964

Acts Referred:
Constitution of India, 1950 — Article 226
Finance Act, 1961 — Section 13

Citation : AIR 1965 Mad 312 : (1965) ILR (Mad) 459

Hon'ble Judges : S. Ramachandra Iyer, C.J;Venkatadri, J

Bench : Division Bench

Judgement

S. Ramachandra Iyer,C.J.

1. The short point for consideration in this appeal against the judgment of Veeraswami J. is whether object glasses and lenses used in the

manufacture of Theodolites will be liable to a countervailing duty on import under item 60(9), (4) of the Tariff Act, 1934, as comprised under the

heading of ''glassware''. The appellant company amongst its other lines of business, manufactures scientific and survey instruments. They imported

by air on 23-11-1961, during the licensing period April to September 1961, under an actual user''s license issued under Item 92 G-2 of the Import

Trade Control Policy book, object glasses and lenses for being used as component parts of Theodolites to be manufactured by them. For the

purpose of import duty these articles fall under Item 77 of the Indian Tariff Act, 1934, which runs ""Instruments, apparatus and appliances other

than electrical, all sorts not otherwise specified-40 per cent ad valorem if imported from the United Kingdom.

Accordingly an import duty of 40 per cent on the as valorem value of the goods was levied by the Customs authorities on the materials imported.

That duty was paid by the appellant without any demur. But the authorities imposed an additional duty of 15 per cent on the ground that the articles

imported would also come under Item 60(9), (4) of three schedule to the Tariff Act as glassware and as such liable to countervailing excise duty

inasmuch as object glasses and lenses manufactured in this country will be liable to excise duty of 15 per cent under the provisions of the Finance

Act of 1961. Before referring to the relevant provisions of that enactment we may refer to Item 23A of the Central Excise and Salt Act, 1944. The

description of the goods dealt with by that article are these:

Glass and Glassware-(1) sheet glass and plate glass, (2) Laboratory glass-ware, (3) glass shells, glass globes and chimneys for lamps and lanterns

(4) other glassware including tableware"". We are concerned in the present case with the last of the item above mentioned. section 13 of the

Financier Act of 1961 has prescribed this duty of 15 percent by way of excise duty on glassware manufactured in this country.

2. Item 60(9) of the Tariff Act reproduces these very items contained in the Excise Act and provides inter alia under column 4, ""The excise duty

for the time being livable on like articles if produced or manufactured in India and where such duty is livable at differentiates the highest duty; and

the duty so livable shall be in addition to the duty which would have been levied if this entry had not been inserted"".

3. It will be seen from the foregoing that the duty imposed at the time of import under the provisions aforesaid is really a protective or

countervailing duty. The reason for the imposition of the duty under item 60(9) equivalent to excise duty livable on similar goods manufactured in

this country is not far to seek, namely, that manufacturer of the same category of goods in this country ought not to suffer unfair competition from

outsiders. If the former were to pay excise duty the latter too should be compelled to pay countervailing duty as otherwise the importer of foreign

goods will be at an advantage over the manufacturer within this country. For the imposition of this countervailing duty it is not essential that identical

goods should have been actually manufactured in this country. It would be sufficient if they are likely to be manufactured and if so manufactured

they become liable to excise duty.

4. The Customs department in the instant case imposed on the goods imported an additional duty of 15 per cent. The appellant paid that amount

under protest as they wanted to clear the goods; but they later applied to the same authorities for refund of the 15 per cent duty as illegal

collection. Failing to get relief from those authorities they applied to this court under Art. 226 of the Constitution for a direction to the appropriate

authority to refund that amount. Veeraswami J. dismissed that application holding that the Customs authorities could not be held to have decided

the question of liability to duty in any unreasonable way. That opinion of the learned Judge can even be rested on a firmer grounds we are of the

opinion that the levy of 15 per cent as countervailing duty in the instant case can be fully justifies under the provisions of the various statutes

referred to above.

5. There is no controversy in this appeal on two matters: (1) for the purpose of licensing, object glasses and lenses would come under item 92 of

section II of Import Trade Control Policy Book, the relevant classification being ""Instruments, apparatus and appliances other than electrical

including cinematographic, but excluding articles otherwise specified in the schedule; (2) for the purpose of import duty under the Indian Tariff Act,

it will be covered by Item 77 of Section XVIII to Schedule I, namely, ""Instruments, Apparatus and Appliances etc.

6. The question that has got now to be decided is whether parts of those instruments if imported would be liable to a further protective duty under

the Indian Tariff Act. Item 60(9) of that Act imposes a duty corresponding to excise duty on the same or similar articles, namely ""other glass ware

including table ware"". The provisions of Item 60(9) themselves show that the countervailing duty provided thereunder would be in addition to any

other duty which the article may suffer on account of the other provisions in the schedule. It would follow from this that even if an article imported

fell under another category altogether and the relevant duty had been imposed a further duty will be attracted under this item.

7. Mr. Padhmanabhan appearing for the appellant has contended that object glasses and lenses for Theodolite can never be regarded as

glassware. The argument of the learned counsel runs thus: The lenses used for theodolites are manufactured by a combination of silica with various special bases and that therefore they cannot be equated to glasses or glassware which are manufactured with silica and sodium etc. Glassware in

popular language can only mean crockery; therefore lenses and object glasses, the component parts of scientific instruments can hardly be

regarded either as tableware or crockery or any other type of glassware. We are of the opinion that this is a narrow construction of the terms of

the statute. To adopt that construction would be to defeat the very purpose of the imposition of an additional protective duty. The other subhead,

Item 3 under the very entry shows that a wider meaning must have been intended. Item 3 in Item 60(9) refers to laboratory glassware which

cannot mean merely crockery or chimney.

It is then contended that the term glassware must imply an article like a receptacle and that in as much as lens cannot be a receptacle it cannot

come within the term glassware. We are unable to accept any such limitation on the meaning of the word glassware. It is seen that articles like

tableware chimneys sheet glasses etc, have been specifically referred to and when the residuary clause refers to glassware, it must necessarily be

intended to conclude items of glassware other than those mentioned; they cannot be merely read ejusdem generis with what had been mentioned

previously. It is a rule of presumption in the interpretation of statutes that the words used in a statute are to be regarded as strictly and correctly

used by the legislature. Although it has often been recognised that ordinary dictionaries can but be imperfect guides to the construction of statutory

terms which have to be interpreted to accord with the underlying and disclosed intention of the Legislature reference to standard dictionaries has

often been held to afford almost a sure guide to the meanings of the terms used in a particular statute. Craies on Statute Law. 6th Edn. cites the

following passage from the judgment of Lord Coleridge in R. V. Peters, 1886 16 Q. B. D. 636

I am quite aware that dictionaries are not to be taken as authoritative exponents of the meanings of words used in Acts of Parliament, but it is a

well known rule of courts of law that words should be taken to be used in their ordinary sense, and we are, therefore, sent for instructions to these

books. And ""In Cadmium (Marquis) v. Inland Revenue Commrs. 1914 1 K. B. 641, Cozens-Hardy M. R. said ''It is for the court to interpret the statute as best themselves in the discharge of their duty by any literary help they can find, including, of course, the consultation of standard authors

and reference to well known and authoritative dictionaries.

It being thus permissible to look for the meaning of a word of comprehensive import in the dictionaries, in order to ascertain the intention of the

legislature, we shall now refer to them. In Webster''s New International Dictionary ""Glassware"" has been defined as ""ware made of glass"". The

term ""ware"" means articles of merchandise or those manufactured. In the Shorter Oxford Dictionary the ''glassware'' has been interpreted to mean

''articles made of glass.

Undoubtedly lenses and object glasses used in the manufacture of Theodolites are made of glass and in that sense it can be said that they are

glassware. It is true that in the interpretation of taxing enactments a strict construction should be adopted on their provisions; but there is no reason

why a word of wide import should be given a narrow meaning when there is nothing in the context or underlying policy of the legislature to import

any such limited meaning.

Further it must be remembered that the duty in question is a protective one imposed with a view to secure equal opportunity to the indigenous

manufacturer to sell his products along with a businessman selling in imported foreign parts. The rule in such a case would be that the words of a

given statute should be given their ordinary meaning unless there is something in the context which compels the court to restrict such ordinary

meaning. In that view, the term glassware should, in our opinion, include lenses and object glasses also. We therefore agree with the learned Judge

that the order of the Collector of Customs cannot be assailed.

8. This appeal fails and is dismissed with costs.

9. Appeal dismissed.

