

(1990) 11 SC CK 0023

In the Supreme Court Of India

Case No : Civil Appeal No. 1036 (NM) of 1990

Plasmac Machine Manufacturing Co. Pvt. Ltd.

APPELLANT

Vs

Collector of Central Excise, Bombay

RESPONDENT

Date of Decision : 27-11-1990

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35L

Citation : AIR 1991 SC 999 : (1991) 31 ECC 221 : (1991) 51 ELT 161 : (1990) 4 JT 549 : (1990) 2 SCALE 1149 : (1991) 1 SCC 57 Supp : (1990) 3 SCR 384
Supp : (1992) 84 STC 107 : (1991) 1 UJ 282

Hon'ble Judges : R. M. Sahai, J;K. N. Saikia, J

Bench : Division Bench

Advocate : N.B. Shetty, J.b. Dadachanji, S. Sukumaran and D.N. Mishra, for the Appellant;

Final Decision : Disposed Of

Judgement

K.N.SAIKIA, J.—The appellants M/s. Plasmac Machine Manufacturing Co. Pvt. Ltd., Bombay are manufacturers of Injection Moulding Machines of four categories and the same were classified under tariff Item No. 68. For these machines they manufacture approximately 19 parts, one of which is called "Tie Bar Nuts" which are the subject matter of this appeal. The Tie Bar Nuts are manufactured from 2 3/4" hexagonal M.S. Bar having special threads known as 'acme threads'. The Tie Bar Nuts are stated to be components of Injection Moulding Machines (tailormade) and are used to fix the platens in correct distances in between tie bars.

2. The appellants submitted their classification list for the year 1981-82 for 84 gms., and 56 gms., and 70 gms., semi-automatic and fully automatic "plasmac" Injection Moulding Machines under tariff Item 68 alongwith enclosure of 19 parts manufactured and used in the said machines. In these 19 parts Tie Bar Nuts were shown against Srl. No. 15. However, the Assistant Collector of Central Excise classified and approved the said Tie Bar Nuts under tariff Item 52 and not

under 68. The Superintendent, Central Excise, Range-I vide his letter dated 20.10.1981 forwarded the classification list and directed the appellants to file a separate classification list for the Tie Bar Nuts under tariff Item 52 and take out licence for the same and also to furnish value and clearance of Tie Bar Nuts for the year 1980-81 and 1981-82. Aggrieved at this classification the appellants appealed to the Collector of Central Excise (Appeal) Bombay who, while allowing the appeal, ordered that Tie Bar Nuts be classified under tariff Item 68 on the ground that Tie Bar Nuts were not available in the market and were designed for a particular purpose i.e. for Injection Moulding Machines, and those could not be used for any other purpose. The department appealed therefrom to the Central Custom, Excise and Gold Control Appellate Tribunal. New Delhi. Before the Tribunal the department, inter alia, contended that the sample of the product showed that it was a plain nut and no special features were apparent, and that the main function of the Tie Bar Nuts would be of fastening, and other functions, if any, would be secondary. It was contended by the appellants that the Tie Bar Nuts were used in course of the continuous process of manufacture of the machines and formed its integral part, being specifically made for use in the machines; and that Tie Bar Nuts were neither available nor saleable in the market, their only function being to fix the platens in correct distances between Tie Bars.

3. The Appellate Tribunal held that from the evidence on record it is found that according to the appellants themselves the Tie Bar Nuts in question have the function of fastening for the machine and, therefore, the contention that the main function of Tie Bar Nuts is not to fasten any part but to adjust the distance between two platens does not change the complex of the case, and that there is no doubt that the Tie Bar Nuts would merit Classification under tariff item 52. The department's appeal having thus been allowed by the Appellate Tribunal, the appellants have preferred this appeal u/s 35L of the Central Excise and salt Act, 1944, hereinafter referred to as "the Act".

4. Mr. Puchkanimal, the learned Counsel for the appellants submits, inter alia, that the appellants have since long been classifying Tie Bar Nuts under tariff item 68 without objection from the department and there is no justification for the department to change that classification; that the Tribunal's finding that on the appellants' own showing that Tie Bar Nuts performed the function of fastening was wrong; and that the Tie Bar Nuts produced by the appellants to specifications required for captive use in the Injection Moulding Machines and not for sale in the market could not be classified under tariff Item 52.

5. Mr. Santosh Hegde, the learned Addl. Solicitor General, referring to the meaning of 'fasten' in the Webster's Third New International Dictionary submits that the appellants themselves having stated that the function of the Tie Bar Nuts is to 'fix' the platens in correct distance between Tie Bars, in their letter dated October 22, 1981 to the Superintendent, Central Excise, Range-I, they have in effect admitted that the Tie Bar Nuts performed the function of

'fastening', which also includes 'fixing', and that the Tribunal was, therefore, right in classifying those under tariff Item 52 allowing the revision in classification. We may now examine these contentions.

6. The appellants contention that the department having earlier approved the classification of Tie Bar Nuts under tariff item 68 has no justification for its revision is, to our mind, not tenable inasmuch as there could be no estoppel against a statute. If according to law Tie Bar Nuts fall within tariff Item 52 the fact that the department earlier approved their classification under tariff Item 58 will not estop it from revising that classification to one under tariff Item 52. See AIR 1989 617 (SC)

7. The submission that the Tie Bar Nuts manufactured by the appellants to specifications of Injection Moulding Machines for captive use and not for sale is also, in our view, untenable, as such use is not determinative of the question. If the goods are capable of being sold that would be enough. In *Bhor Industries Ltd., Bombay Vs. Collector of Central Excise, Bombay*, the crude PVC films as produced by the appellants were not known in the market nor could they be sold in the market. *Sabyasachi Mukharji, J.*, as he then was, while considering the submission that it was only the goods as specified in the schedule to the Act that could be subjected to the duty in para 6 observed:

For articles to be goods these must be known in the market as such or these must be capable of being sold in the market as goods. Actual sale in the market is not necessary, user in the captive consumption is not determinative but the articles must be capable of being sold in the market or known in the market as goods. That was necessary.

8. The appellants themselves have called the goods 'Tie Bar Nuts' and those are admittedly used for fixing platens at appropriate distances. It cannot be said that the Tie Bar Nuts after their manufacture did not constitute goods; their actual sale in the market was not necessary.

9. In *Ujagar Prints Vs. Union of India (UOI)*, it has been held that excise duty is levied on manufacture and production of goods and the liability to pay such duty is not dependent on whether the manufacturer is the owner or not. The question whether the producer or the manufacturer is or is not the owner of goods is not determinative of the liability.

10. Mr. Puchkanimal has emphasised that fastening has not been the function of Tie Bar Nuts manufactured by the appellants and used in their Injection Moulding Machines, and so those would not fall under Tariff Item 52.

11. Tariff Item 52 at the relevant time said:

52. Bolts and nuts, threaded or tapped and screws, of base metal or alloys thereof, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power.

Explanation: The expression "Bolts and nuts, threaded or tapped and screws" used in this item shall include bolt ends, screw studs, screw studding, self-tapped screws, screw hooks and screw rings." It has not been denied that the Tie Bar Nuts are of base metal or alloys manufactured with the aid of power and are acme-threaded. From the language in Item 52, it would appear that fastening in the strict sense may not be the only function of nuts. Fixing may also be a kind of fastening. In *Simmonds Marshal Ltd. Vs. M.R. Baralikar*, Assistant Collector of Central Excise, Pune and others, the Bombay High Court held that 'nyloc self locking nut', is a kind of nut and is classifiable under Item 52.

12. 'Fasten', according to Webster's Third New International Dictionary, means "2a: to cause to hold to something else; attach especially by pinning, tying, or nailing; b; to cause (parts which are separate) to hold together; make fast and secure; c: to fix firmly or securely in position." 'Fix', according to the same dictionary, means "1a(1): to make (a material object) firm, stable, or stationary; make fast (a post in the ground); Clause (1): fasten, attach, affix." 'Nut' according to the same dictionary means "3: a perforated block that is usually a small piece of metal of square or hexagonal section, that has an internal screw thread, and that is used on a bolt or screw for tightening or holding something or for transmitting motion." 'Fasten' according to the Shorter Oxford English Dictionary means "1. to make fast; to make firm or stable; to confirm; 4. to make fast to something else; to attach by a tie or bond." 'Fix' according to the same dictionary means "I.1. to fasten, make firm or stable; to set or place and secure against displacement." 'Nut' according to the same dictionary means "II.3.a. small block of wood, iron, etc., pierced, and wormed with a female screw; used to make a bolt fast or adjust it."

13. 'Fasten' according to Collins English Dictionary means "1. to make or become fast or secure; 2. to make or become attached or joined; 3. to close or become closed by fixing firmly in place, locking etc." 'Fix' according to the same dictionary means "1. to make or become firm, stable or secure; 2. to attach or place permanently."

14. According to Webster Comprehensive Dictionary International Edition 'Fasten' means to attach or secure to something else; connect; to make fast; secure. 'Fix' according to the same dictionary means "1. to make firm or secure; attach securely; fasten, 17. to become firm or fixed". 'Nut' according to Collins English Dictionary means "9. a small metallic block, usually hexagonal or square with an internal screw thread enabling it to be fitted onto a bolt." According to the Webster Comprehensive Dictionary International Edition 'nut' means "2. a small block of metal having an internal screw thread so that it may be fitted upon a bolt, screw, or the like."

15. We are conscious of the limited use of dictionary meaning in classification of goods for tariff Items. We are using it in this case for the meaning of 'fasten' and 'fix' and not for the meaning of 'nuts'. From the above shades of meaning, we do not find such difference between the functions of 'fastening' and 'fixing' in

respect of a 'nut', so as to justify classification of Tie Bar Nuts differently from other nuts on the basis of its function.

16. The submission that 'nuts' in entry 52 are to be understood in the commercial sense is not disputed by the department. It is an accepted principle of classification that the goods should be classified according to their popular meaning or as they are understood in their commercial sense and not as per the scientific or technical meaning. *Indo International Industries Vs. Commissioner of Sales Tax, Uttar Pradesh, and Dunlop India Ltd. and Madras Rubber Factory Ltd. Vs. Union of India (UOI) and Others*, have settled this proposition. How is the product identified by the class or section of people dealing with or using the product is also a test when the statute itself does not contain any definition and commercial parlance would assume importance when the goods are marketable as was held in *Atul Glass Industries (Pvt.) Ltd. Vs. Collector of Central Excise, and Indian Aluminium Cables Ltd. Vs. Union of India and Others*, . In *Asian Paints India Ltd. Vs. Collector of Central Excise*, which was a case of Emulsion paint, at para 8 it was said:

It is well settled that the commercial meaning has to be given to the expressions in tariff items. Where definition of a word has not been given, it must be construed in its popular sense. Popular sense means that sense which people conversant with the subject-matter with which the statute is dealing, would attribute to it.

17. *Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad*, was applied.

18. In the instant case there is no dispute that Tie Bar Nuts conform to the popular idea of nuts. In *Indo International Industries, v. Commissioner of Sales Tax*, (supra) this Court observed that in interpreting items in statutes like the Excise Act or Sale Tax Act, whose primary object was to raise revenue and for which purpose to classify diverse products, articles and substances, resort should be had not to the scientific and technical meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. The fact that in the instant case the learned Technical Member of the Tribunal held in dissent that the Tie Bar Nuts are not fastening nuts would therefore be of no avail to the appellant.

19. Applying the foregoing principles and considering the fact that the Tie Bar Nuts' function of fixing the platens as stated by the appellants and that of fastening, as argued by them, are not basically different, and the appellants themselves having called the goods as 'nuts', we are of the view that the Tribunal is correct in classifying Tie Bar Nuts under tariff Item 52. We, therefore, do not find any reason to interfere with the department's prospective modification of the classification. We find no justification for classifying those in the residuary Item 68. As was held in *Dunlop India Ltd. v. Union of India*, (supra) if an article is classifiable under a specific item, it would be against the very principle of

classification to deny it the proper parentage and consign it to the residuary item.

20. This appeal accordingly fails and is dismissed, but without any order as to costs.