
(1987) 08 BOM CK 0064
In the Bombay High Court
Case No : Writ Petition No. 269 of 1982

P.M.P. Auto Industries Ltd.

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 11-08-1987

Acts Referred:

Citation : (1989) 22 ECC 207 : (1987) 31 ELT 369

Hon'ble Judges : H. Suresh, J

Bench : Single Bench

Judgement

1. The petitioners manufacture what is known as "push-pull switches, headlight switches and stop-light switches" for the motor vehicles, and for that purpose they have a factory off Aarey Road, Goregaon (East), Bombay - 400 063. The said switches manufactured by the petitioners are parts and accessories of "motor vehicles" and prior to June 1979 they attracted ad-valorem duty under Tariff Item 34A of the First Schedule to the Central Excise & Salt Act, 1944 (hereinafter referred to as "the said Act"). Tariff Item 34A prior to its amendment by the Finance Act of 1979 stated as follows :

"Parts and accessories not elsewhere specified, of motor vehicles and tractors, including, trailers.

Explanation - The expression "Motor Vehicles" has the meaning assigned to it in Item No. 34."

2. In 1979, the Tariff was amended to include the specified parts and accessories of motor vehicles and tractors, on which duty was payable under Item 34A. The effect of this amendment was that such of the parts and accessories of motor vehicles, etc. which were hitherto exempted under Notification No. 99/71 dated 29th May, 1971 would thereafter pay duty under Tariff Item No. 68. The amended Tariff Item 34A is as under :

"Item No. 34A - Parts of Motor Vehicles, Tractors and Trailers.

----- Description	Rate	of	Item No.	Tariff Duty
----- 34A. Parts and accessories of Motor Vehicles and Tractors including ad-valorem Trailers, the following, namely :- (i) Brake linings; (ii) Clutch facings; (iii) Engine Valves; (iv) Gaskets; (v) Nozzle and nozzle holders; (vi) Pistons; (vii) Piston rings; (viii) Gudgeon pins; (ix) Circlips; (x) Shock absorbers; (xi) Sparking plugs; (xii) Thin-walled bearings; (xiii) Tie rod ends; (xiv) Electric horns; (xv) Filter elements, inserts and cartridges.				
----- Explanation I - The expression "Motor Vehicles" has the meaning assigned to it in Item No. 34.				

Explanation II - The expression "Tractors" shall include agricultural tractors."

As the aforesaid switches were not included in the amended Tariff Item 34A, the said switches, fell under Tariff Item No. 68 of the Tariff. Accordingly, the petitioners paid duty under Tariff Item 68 from June, 1979 onwards.

3. However, sometime in 1982, the Department sought to classify the switches manufactured by the petitioners under Item 61 of the Central Excise Tariff. Item 61 of the Tariff is as follows :

"61. Electric lighting fittings, namely :- switches, plugs, and sockets, all kinds, chokes and starters for fluorescent tubes."

3a. It appears that the Central Board of Excise and Customs by a Tariff Advice dated 8th December, 1981 informed all the Collectors of Central Excise and Customs that these switches when manipulated, directly resulted in the switching of electric lights, and therefore, would fall within Item 61 and they are to be classified accordingly. In this Tariff Advice, there is a reference to a Conference and there was a discussion and the discussion indicates that the main function of the switch was ignition and not lighting and, therefore, this would go outside the purview of Item 61. The Tariff Advice further observes that the switches which are specially designed for motor vehicles should normally go under Item 68. However, the Board purported to give directions otherwise.

4. It is clear that the conduct of the Department is mainly influenced by such a direction given by the Board. Mr. Setalvad, appearing for the petitioners, pointed out that whenever a question of classification arose before the Assistant Collector of Customs or before any other authority, that has to be decided in a judicial manner and, therefore, in substance the officers are carrying out quasi-judicial functions and such quasi-judicial functions cannot be controlled by any higher authorities. He also pointed out that the Supreme Court has held that the procedure of issuing such Tariff Advice is subversive of the quasi-judicial process. He drew my attention, in this behalf, to the case of Orient Paper Mills Ltd. Vs. Union of India (UOI), .

5. As regards the question whether these switches are automobile spares or that

they are electrical fittings, there should be no difficulty in deciding, inasmuch as the Supreme Court in the case of Atul Glass Industries (Pvt.) Ltd. Vs. Collector of Central Excise, , has considered as to what should be the approach of the Court in such cases. The test in all such cases is, how the product is commercially known. I had an occasion to deal with a similar case in respect of automobile starters, being the case of Sahney Steel and Press Works Ltd. v. The Union of India and Others (Writ Petition No. 326 of 1981) and by my order dated 16th July, 1987 I held that the product would be a part of motor vehicles and not a part of electric motors as such. Similarly, in the present case these products will have to be considered as part of automobile spare parts and not as electric switches as would fall within Item 61. If the Item is considered in its commercial sense, it becomes a part of the motor vehicles and in that event since the same was not provided under Item 34A, it must necessarily fall under the Residuary Item No. 68. This item cannot be considered otherwise.

6. Mr. Setalvad has also drawn my attention to the fact that these products are known as parts of motor vehicles and in that connection the petitioners have relied on certain certificates issued by reputed dealers in auto-electric spare parts and also by a dealer who deals in ordinary electric parts. It is interesting to note that the certificate issued by Modi Electrical Corporation clearly says that such switches are not known in the electric lighting, fitting, trade as switches for domestic use and/or use in buildings. It further says that normally none of the dealers dealing in the trade of electrical lighting, fitting would store and/or sell the switches manufactured by the Company and that such switches would normally be available with persons dealing in accessories and parts of motor vehicles. That should satisfy the requirements of the law.

7. As regards the above certificates, Mr. Shah for the respondents submitted that these cannot be taken into account. He submitted that the matter cannot be concluded on the basis of the certificates issued by the dealers. I think, the test is still as to how these products are commercially known. I posed the question to Mr. Shah at the stage of arguments whether these products are available at the Lohar Chawl or at Opera House. At the Lohar Chawl, we have a market for ordinary electrical lights and fittings, whereas at Opera House we have a market for spare parts of automobiles. It is at Opera House we get these switches and not at Lohar Chawl. That should be the test in a matter of this type.

8. In the result, the petitioners succeed and I pass the following order :

ORDER

9. Rule made absolute in terms of prayers (a) and (b) of the petition. The bank guarantees given to the Department do stand discharged and the same be cancelled and returned to the petitioners within a period of six weeks from today. In the circumstances of the case, there will be no order as to costs.