(1971) 04 GUJ CK 0004

In the Gujarat High Court

Case No : Special Civil Application No. 1459 of 1969

Purshottam Gulab Budh APPELLANT

Vs

Government of India RESPONDENT

Date of Decision : 22-04-1971

Acts Referred:
Central Excise Rules, 1944 — Rule 210A, 7, 9(2)

Citation : (1971) 04 GUJ CK 0004

Hon'ble Judges : J.B. Mehta, J;D.A. Desai, J

Bench : Division Bench

Advocate : J.P. Joshi, for the Appellant; G.T. Nanavati, for the Respondent

Judgement

Desai, J.—The First petitioner is a partnership firm of which petitioners Nos. 1 to 6 are the partners. Petitioner No. 4 used to manufacture

during his leisure hours fans of transistor shape, consisting of a plastic cabinet and a motor run by a battery cell. The Petitioner describes the fans as

baby fans or toy fans. The Senior Superintendent of Central Excise served a notice on the first petitioner asking the firm to pay a sum of Rs. 25 in

lieu of prosecution as they had contravened the provisions of rule 210-A of the Central Excise Rules of 1944 in as much as the firm manufactured

200 transistorised electric fans during S.Y. 2019 to 2023 without securing a Central Excise licence for the manufacture of the same. On July 11,

1967 the petitioner received a letter from the Inspector of Central Excise, Jamnagar making a demand of excise duty in respect of 200 fans at the

rate of Rs. 5/- plus Re. 1/- as special excise per fan. The Superintendent, Central Excise, Jamnagar served a demand notice on the first petitioner

on September 15, 1967, asking the said petitioner to show cause why the penalty should not be imposed on the firm for contravening rule 9(2) read with rule 7 of the Central Excise Rules, 1944. Why one fan seized from the said firm should not be confiscated under rule 9(2) of the said

rules and why duty on 200 fans should not be recovered from the firm under the provisions of the said rule. The petitioner firm gave an explanation

by its letter dated September 22, 1967 denying that they had manufactured 200 transistorised electric fans and the said fans could not be classified

as electric funs under tariff item 33 by any stretch of imagination as they were curiosity articles for children''s play. By an order dated October 28,

1967, the Superintendent, Central Excise, Jamnagar, ordered a penalty of Rs. 100 under rule 9(2) of the Central Excise Rules, 1944 and also

ordered confiscation of one fan under the said rule. Against this order an appeal was filed to the Deputy Collector, Central Excise, Ahmedabad but

the same was dismissed. The petitioners filed revision application before the Government and the same was also dismissed. The petitioners have

filed this petition challenging the said orders passed by the Central Excise Authorities on the ground that the tariff item 33 has not been properly

interpreted and the decisions of the authorities that the fans which the petitioners had manufactured were covered by the said item.

2. The relevant part of Item 33 is as follows :-

Tariff Description of goods Rate of duty item No.

Basic Special Excise

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33 Electric Fans including air circulators but excluding

those hich are designed for use in industrial system

as parts indispensable for its operation and have been

given for that purpose some special shape or quality

which not be essential for their use for any other

purpose, and parts of such electric fans -

(1) Table, cabin, carriage, Rs. 7.50 20% of

pedestal and air-circulator per fan. basic duty

fans, not exceeding 40.60 n. chargeable.

The question is whether the articles in question are electric fans. It is well established principle that when an article is sought to be taxed the

definition of the article as given in the Act has to be considered. If no definition of the article sought to be taxed is given in the statute, the Court has

to consider how the article sought to be taxed is understood in common parlance. See the case of M/s. Sarin Chemical Laboratory v.

Commissioner of sales Tax, UP, 1970, Vol. II. Supreme Courts cases, page 403. The words ""electric fan"" are not defined in the Act. The

dictionary meaning of the word ""fan"" as defined in the shorter Oxford English Dictionary, 3rd Edition, is as follows :-

(1) an instrument for agitating the air, to cool the face with an artificial breeze.

(2) a rotating apparatus, usually consisting of an axle or spindle, for producing a current of fair for ventilation"".

3. The word ""fan"" is also understood in the same sense in common parlance. One of the articles which is to be taxed in the present case is shown

to us. When it was worked, it did display air but the displacement was so negligible that it cannot be said that it circulated air. It is a article of

curiosity for children. It is not capable of being used as a fan. It is not the appearance of the article that matters, but the test is whether the article

can be used as a fan. The article is not capable of being used as a fan. The decision of the Central Excise Authorities that the articles fall within the

Tariff Item No. 33 is patently erroneous. By erroneously construing the said item, the Central Excise Authorities recovered the excise duty, penalty

from the petitioner and had confiscated one fan. For the aforesaid reasons these orders cannot be sustained and, therefore, the said orders passed

by the Central Excise Authorities, to the effect, that the petitioners are liable to pay excise duty and penalty in respect of the articles in question are

quashed. The order confiscating one toy fan is also quashed. As no duty or penalty is payable in respect of the articles in question, the duty or

penalty, if paid, is ordered to be refunded and it is directed that the confiscated toy fan be returned to the petitioners. The rule issued on the

petition is accordingly made absolute. The respondents to pay costs of the petitioners.