
(1995) 06 BOM CK 0056
In the Bombay High Court
Case No : Writ Petition No. 2606 of 1986

Ralliwolf Limited

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 15-06-1995

Acts Referred:

Citation : (1995) 79 ELT 579

Hon'ble Judges : S.H. Kapadia, J;M.L. Pendse, J

Bench : Division Bench

Judgement

Pendse, Acting C.J.

1. Petitioner No. 1 is a company registered under the Companies Act and runs a factory at Lal Bahadur Shastri Marg, Mulund, Bombay for manufacture of portable power tools which were classified under Tariff Item No. 51A of the Central Excise Tariff. The Company also manufactures armatures and field coils which are used as components in the manufacture of portable power tools. The Company had claimed that the parts which constitute the electric driving mechanism and an integral part of the portable tools were not electric motor under Tariff Item 30. The Central Board of Revenue had informed the Company in 1961 that levy of excise duty is not permissible in respect of electric motors and tools.

2. It is the claim of the petitioners that upto January 2, 1984 the duty was paid on parts as parts of electric motors under Tariff Item No. 30D of Central Excise Tariff. The Company filed fresh classification list and classified parts under Tariff Item No. 68, which is residuary item. The Company received show-cause notice from Assistant Collector of Central Excise and after considering the reply by order dated November 15, 1984 the Assistant Collector classified the parts under Tariff Item No. 68.

On the basis of the aforesaid order, the Company filed refund claims for various periods commencing from January 2, 1984. The refund claims remained

unattended and thereupon the company held the present petition for directions to the Assistant Collector to refund the amount. The petition was duly admitted.

3. During the pendency of the petition, the collector of Central Excise set aside the order passed by the Assistant Collector on November 15, 1984 classifying the parts under Tariff Item No. 68. The Collector in appeal held that parts of electric motors are classified under Tariff Item No. 30D. The Company thereupon amended the petition and challenged the order of the Collector. The amendment was granted.

4. Shri Bharucha, learned counsel appearing on behalf of the petitioners, submitted that the Collector was in error in classifying the parts of electric motors Tariff Item No. 30D. The submission cannot be accepted in view of the decision of Division Bench of this Court, into which one of us (Pendse J.) was a party and reported in Kulkarni Black and Decker Ltd. Vs. Union of India, , Kulkarni Black an Decker Ltd. v. Union of India. The Division Bench held that rotors and stators assembled in power tools are classified under Tariff Item No. 30D of erstwhile Central Excise Tariff as part of electric motor. In view of the decision of the Division Bench with which we are in agreement, the order of the Collector cannot be faulted and the petition for setting aside the order of the Collector must fail.

5. Shri Bharucha submitted that the proceedings were adopted before the Excise Authorities wherein the Assistant Collector had held that the petitioner Company which serves the entire production to M/s. Rallies India Ltd. are related persons. The decision of the Assistant Collector was set aside by the Collector in appeal holding that the petitioner Company and M/s. Rallies India Ltd. are not related persons. Shri Bharucha submits that in view of the decision of the Appellate Authority, it is necessary for the Assistant Collector to recompute the duty payable under Tariff Item No. 30D and the petitioners Company may be entitled to refund of some amount. The claim made by the learned counsel cannot be acceded at this juncture because the order passed by the Collector is under challenge before the CEGAT at the behest of the Excise Authorities, and as long as the Tribunal has not disposed of the appeal, it is not open for the Assistant Collector to recompute the duty payable. In case the appeal pending before the CEGAT ends in dismissal, then it is open for the petitioners to approach the Assistant Collector and demand recomputation. The Assistant Collector will then pass appropriate orders in accordance with law.

6. Accordingly, petition fails and Rule is discharged with costs. In case the petitioners have been paid any amount in pursuance of any interim order passed in this petition, then the petitioners shall repay the said amount the said amount within six weeks from today.