
(1995) 04 SC CK 0021

In the Supreme Court Of India

Case No : Civil Appeal No. 3939 of 1987

Sahney Paris Rhone Ltd.

APPELLANT

Vs

Collector of Central Excise, Hyderabad

RESPONDENT

Date of Decision : 04-04-1995

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B

Citation : (1997) 57 ECC 227 : (1995) 77 ELT 13 : (1995) 2 SCALE 591 : (1995) 2 SCC 359 Supp : (1995) 3 SCR 150

Hon'ble Judges : Sujata V. Manohar, J;S. B. Majmudar, J;R. M. Sahai, J

Bench : Full Bench

Advocate : V. Sridharan, Bharat Deepak and Suresh Vohra, for the Appellant;
N.K. Bajpai, P. Narasimhan and V.K. Varma, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Majmudar, J.—This appeal is moved by the appellant-assesses u/s 35-L of the Central Excise and Salt Act, 1944 (hereinafter referred to as "the Act") against the order dated 24th September, 1987, passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal") in appeal. A few facts leading to the appeal deserve to be noted at the outset. The appellants are engaged in the manufacture of various spares of automobiles parts. One of these parts is the self starter used in motor vehicles. The appellants filed a Classification List showing the self starter motor as falling under Tariff Item 68. The said Classification List was filed on 20th June, 1980. On 2nd July, 1981, the Assistant Collector returned the Classification List as filed by the appellants with a direction that the appellants should re- submit the same after classifying the self starter motor under Tariff Item 30 as electric motor. On 13th July, 1981 the appellants re-submitted the Classification List, under protest, as directed by the Assistant Collector. On 20th August, 1981, the Assistant Collector vacated the protest lodged by the appellants and approved the Classification List showing the self starter motor under Tariff Item 30. On 13th

November, 1981, the appellants being aggrieved by the order dated 20th August, 1981, passed by the Assistant Collector, filed an appeal before the Collector of Central Excise (Appeals), Madras. That appeal was dismissed on 27th February, 1982. Thereafter, the appellants filed a revision petition before the Additional Secretary to the Government of India, Ministry of Finance, Department of revenue. That revision petition was transferred to the Tribunal and was heard as an appeal u/s 35P(2) of the Act. By order dated 24th September 1987, the Tribunal dismissed the appeal and upheld the view of the lower authorities that the self starter manufactured by the appellants is liable to be taxed under Tariff Item 30 being an electric motor.

2. The short question for our consideration is whether the self starter manufactured by the appellants falls under Tariff Item 30 being an electric motor, or it is covered by residuary Tariff Item 68 as applicable at the relevant time. The appellants contend that it is not an electric motor, therefore, it is covered by the residuary entry. The Revenue contends that it is covered by Tariff Item 30 being an electric motor.

3. The Tribunal considered in details the nature of self starter motor manufactured by the appellants, in Paragraph 16 of the impugned judgment. The Tribunal has observed as under:

The motor receives its current of electrical energy through the solenoid, a relay mounted on the motor. When the current enters the solenoid, the soft iron core shaft is pulled to contact the plate behind it. This does two things. One, the lever is pulled back at its top, thus pushing it forwards at its lower end; this forces the toothed gear pinion towards the flywheel to mesh with it; and two, the circuit to the starter motor is closed. When the toothed gear meshes with the flywheel, and a split-second later, the starter motor receives current, the rotor shaft spins, and the toothed gear riding on it, and now engaged with the flywheel, also spins, cranking the engine. When the engine fires, its speed rises higher than the speed of the motor and so the toothed gear is thrown back to its original position on the helical spines of the starter motor's rotor shaft. This is a much simplified description of how the starter motor works - the actual working has many other details, but the purpose is only to illustrate the basic fact that the starter motor is an electric motor, and works like an electric motor. It operates only on electricity; it delivers output viz. rotary motion, which turns a motor vehicle engine to start it. It is true that it does not run for long periods....

4. The learned counsel for the appellants vehemently contended that even though self starter motor receives its current of electrical energy through solenoid, it ultimately rotates iron core shaft which fires the engine converting electric energy into mechanical energy. But for the solenoid this self starter motor could not serve its purpose of starting the internal combustion engine fitted to the motor vehicle. Therefore, it is not only the electric motor which is the sole part of the self starter motor manufactured by the appellants but it is electric motor with something else and that something else together with the

electric motor makes it the self starter motor. Its purpose is to touch and to emit electrical energy for a split-second and which through the help of solenoid ultimately rotates the iron core shaft and the plate behind it which cranks the engine, completes its function and goes back to its original position. Therefore, self starter motor is not electric motor as such but something more vital or at least equally vital added to it that takes it out of the entry of electric motor mentioned in Tariff Item 30.

5. In this connection, it will be useful for us to have a look at Tariff Item 30 as applicable at the relevant time which reads as under:

Item No. 30 - Electric Motors

Item No. Tariff Description Rate of duty (1) (2) (3) 30. Electric motors, all sorts and parts thereof, namely: A. Motors which operate on alternating current - 1. Single phase motors Twenty per cent ad valorem. 2. Three phase motors- (i) for rated output not exceeding Twenty per cent 7.5 Kw. continuous rating or, ad valorem. in the case of short time or intermittent rated motors, its equivalent continuous rating. (ii) for rated output exceeding Ten per cent 7.5 Kw. continuous rating or, in ad valorem. the case of short time or intermittent rated motors its equivalent continuous rating. B. Motors which operate on direct current - (i) with rated output not exceeding Twenty per cent 7.5 Kw. ad valorem. (ii) with rated output exceeding Ten per cent 7.5 Kw. ad valorem. C. Motors which are capable of Twenty per cent operating on alternating current ad valorem. or on direct current. D. Parts of electric motors Twenty per cent (including die cast rotors). ad valorem. Explanation I. - In the case of any multi-speed motor, the highest rated output of the motor shall be deemed to be the rated output of the motor.

Explanation II. - This item does not include motors specially designed for use in gramophones or record players and all parts of such motOrs.

Explanation III. - This item includes motors equipped with gears or gear boxes.

6. A mere look at this Item shows that it is comprehensive in nature and covers all sorts and parts of electric motOrs. The entry, however comprehensive, seeks to cover only electric motors of all types and parts consisting of such electric motOrs. But this entry will not cover any manufactured item which uses not only electric motor but something else to result into the manufactured item. The self starter which the appellants are manufacturing is an item which not only contains electric motor but something more like solenoid and its all other connecting parts without which self starter will not work.

7. In this connection, we may also refer to "The Illustrated Science and Invention Encyclopedia" International Edition, Westport, Connecticut, to which our attention was invited by learned counsel for the appellants. So far as starter is concerned, at page 2223, it has been noted as under:

A starter is a machine for rotating the crankshaft of an engine from rest to a speed at which the engine will commence to operate on its own. The starters

used for INTERNAL COMBUSTION ENGINES are usually battery operated, direct current ELECTRIC MOTOR, ranging in power from 0.5 hp on MOTORCYCLE engines up to 15 hp on very large DIESEL ENGINES.

The motors used are series wound and short time rated that is, the windings of the rotor and stator are electrically connected in series, and the motor is designed to produce a high power output for a short period of time without exceeding a specified temperature. The series winding characteristics give the starter the large initial torque' (turning force) it requires to overcome the static INERTIA and FRICTION of the engine, and to accelerate it up to speed in the shortest possible time to avoid too heavy a drain on the battery.

The starter is a dead weight while the engine is running, and so it must be as light and small as possible. To achieve this the starters are short time rated at two or three minutes : if a starter motor was required to deliver its maximum power over longer periods of time it would have to be bigger and heavier to avoid overheating.

The starter requires a heavy current to operate it. This is of the order of 150 amps on a medium sized CAR and 1000 amps on the very big COMMERCIAL VEHICLES. The switching of this current is accomplished by means of a RELAY or SOLENOID operating a set of electrical contacts. The relay or solenoid in its turn is operated by a switch which is usually controlled by a key, and is placed in the driving cab of the vehicle.

Engagement with the engine is made through a pair of GEARS, the ratio of which is about 12 to 1, the larger gear being that on the engine. The smaller gear, known as the pinion, is positioned on the shaft of the starter, and the larger one is mounted on the housing of the CLUTCH of the engine and is known as the ring gear. There are two methods by which this gear is engaged, the inertia method and the pre-engaged method.

So far solenoid is concerned, the encyclopaedia has the following important information -

A solenoid is an electrical device consisting simply of a coil of wire, and can be made, for example, by wrapping wire around a cylinder. When a current passes through the wire a magnetic field is set up (see ELECTROMAGNETISM), and this is made to move a ferrous core to actuate valves, switches and other devices. The solenoid is therefore a direct application of an electromagnet.

Outside the solenoid the lines of magnetic flux behave in a similar fashion to those of a bar magnet. A solenoid freely suspended horizontally in the Earth's magnetic field will set itself along a North-South line. Its ends behave like the poles of a bar magnet (see MAGNETISM), their polarity depending on the direction of the current in the spiral. Any ferrous material brought into the vicinity of the solenoid will be attracted to the poles along the lines of the magnetic field.

The strength of the magnetic field within the solenoid is uniform for most of its length but near the ends, known as the poles, the field diverges. At the poles the field strength dies rapidly to about one half of the strength in the center. Inside the solenoid, at distances from one end of greater than about $3\frac{1}{2}$ times the diameter of the coil cross section, the field strength is 99% of the calculated value for an infinitely long solenoid. Hence in practice a 'long' solenoid should have a length at least seven times its diameter.

The same dictionary deals with applications as under:

Applications The ability of the solenoid to produce a magnetizing force leads to its use in starting devices and power operated valves, as only a switch need be turned to energize it. For example, solenoid switches are widely used to engage starter motor in cars. Here two solenoids, the 'draw-in' coil and the 'holding' coil, are mounted on top of the starter motor with a plunger running through the inside of both (thus operating in the region where the field strength is uniform and at a maximum). One end of the plunger is attached to a lever which engages and disengages the starter motor pinion with the flywheel. The other end of the plunger is connected to a switch.

When the ignition switch is turned, the 'draw-in' coil is energized and the plunger is drawn to the right, thus engaging the starter motor with the flywheel. When the plunger makes contact with the switch the 'holding' coil and the starter motor are energized and the 'draw-in' coil is short circuited. This is because the 'draw-in' coil drains more power from the battery than is needed to just hold the plunger in position, and this power is now required to turn the starter motor. After the engine has started, the ignition switch is released, the 'holding' coil is de-energized and a spring returns the plunger to its original position, thus disengaging the starter motor from the flywheel.

8. In view of the meanings of the terms "solenoid", "applications" and "starter", as found in the said dictionary for which no exception could be taken by the Revenue and the learned counsel for the Revenue, therefore, has nothing more to say for the same, it has to be held that the self starter motor which the appellants have manufactured is an electric motor fitted with additional items like solenoid and other connected apparatus which taken together would constitute self starter motor. Though the motor is used, it is not motor alone but something else equally important which in conjunction with each other would constitute self starter motor. The learned counsel for the Revenue, in this connection, submitted that even the dictionary meaning of starter makes it clear that there is a direct current electric motor in starter. It is no doubt true. But it is not the electric motor alone, which is manufactured by the appellants, or which can constitute a starter. It is easy to visualise that if only electric motor was manufactured, that by itself would not work as a starter. It could not have propelled mechanical energy to the rotating shaft to crank the engine of the motor car. It is the inter-connection between the electric motor on the one hand and solenoid and other connected apparatus on the other, that together result in the manufacturing of

self starter motor. Consequently, it must be held that on the express language of Item 30 the self starter motor manufactured by the appellant is not covered by it. If that is so, it would naturally fall within the residuary Item 68 as contended by the appellants. In the result, this appeal succeeds. The orders passed by the Tribunal as well as other lower authorities are set aside and it is held that the self starter motors manufactured by the appellants were liable to bear the duty of excise under Item 68 as applicable at the relevant time.

9. During the pendency of this appeal, by interim orders, this Court had directed that the appellants will go on paying the current demand of duty. 50% of the disputed amount of arrears would be paid within fourteen weeks from the date of the order and for the balance 50% Bank guarantee will be furnished to the satisfaction of the Collector concerned within fourteen weeks, if not already furnished. In view of our present order, the demand of arrears will have to be worked out by the Department accordingly and the Bank guarantee would stand discharged to the extent the appellants are found entitled to any refund in accordance with law. That of course will attract the provision of Section 11B of the Act and having considered the same if the appropriate authorities find that pursuant to the present order, the appellants are entitled to any refund then the Bank guarantee obligation and liability to pay the excise duty will have to be worked out accordingly. In the facts and circumstances of the case, there will be no order as to costs.