(1995) 03 SC CK 0054

In the Supreme Court Of India

Case No : C.A. Nos. 3386-3401/83C.A. Nos. 5940-48/83

Union of India (UOI) APPELLANT

Vs

Kalpana Industries Ltd. RESPONDENT

Date of Decision : 07-03-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 27

Citation : (1997) 92 ELT 25 : (1995) 4 SCC 712 Supp

Hon'ble Judges : Sujata V. Manohar, J;S. C. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. These appeals filed by the Revenue involve the question whether Tungsten wire imported by the respondent can be classified as ''electrical resistance wires'' for the purpose of payment of customs duty under Item 73(23) in Section XVI of the First Schedule of the Indian Customs Tariff which was prevalent during the period 1972 to 1975 when the said imports were made. The Assistant Collector of Customs and the Collector of Customs (Appeal) in all the appeals and the Central Government, on revision, in C.A. Nos. 3386-3401/83 and C.A. Nos. 5940-48/83, have taken the view that tungsten wire imported by the respondent is electrical resistance wire and is, therefore, classifiable under the said Item. The claim of the respondent was, however, the Tungsten wire is classifiable under Item 70(1) in Section XV.

2. The respondent filed Writ Petition Nos. 1011 to 1019 of 1974 and 710 to 725 of 1979 in the Delhi High Court against the order of the Central Government in revision dated November 23, 1978 and August 9, 1973. The said writ petition has been allowed by the High Court by its judgment dated March 31, 1980. The High Court has held that tungsten wire imported by the respondent is not covered by Item 73(23) of the Tariff. The High Court was, therefore, quashed the orders holding that tungsten wire was classifiable under the said Item. C.A. Nos.

3386-3401 of 1983 and C.A. Nos. 5940-48 of 1983 and directed against the said judgment of the High Court.

3. C.A. No. 3419 of 1991 is filed by the Revenue against the judgment of the Central Government Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as ''the Tribunal'') dated December 2, 1983 wherein the Tribunal, following the decision of the High Court referred to above, has held that tungsten wire is not classifiable under Item 73(23) and is classifiable under Item 70(1) of the Customs Tariff.

Item 73(23) and 70(1) were as under :

73(23): Nichrome and other electrical resistance wires and strips.

"70(1) : All non-ferrous alloys and manufactures of metals and alloys not otherwise specified."

4. The High Court has referred to Crofts Serial Electricians Handbook (Eight Edition) wherein ''electrical resistance wire'' has been thus explained :

Electrical resistance wire is wire that has the characteristic of high resistance to the flow of electric current. It is this higher resistance characteristic which distinguishes resistance wire from conducting wire. The material used for conducting wires should have as low as resistance as possible. Electrical resistance wire is used for the wiring of rheostate, resistors, heaters, furnaces, electric ranges, etc. Metal alloys are used for the manufacture of resistance wires. The more common alloys employed are nickel chromium, nickel coper, nickel chromium iron, and maganese nickel. In table 215 are listed the properties of metals and alloys manufactured by the Driver-Harris Co. for resistance wire. Although the table gives the trade names for the one company, it will be found to be fairly representative for the alloys of the other manufacures.

5. The High Court has pointed out that as per the table referred to in the above paragraph Nichrome has the third highest resistance, the same being 112, whereas the resistance of Tungsten wire is 5.523, the other four below it being to Aluminium 2.670, Gold 2.350, Copper 1.724 and Silver 1.622. The High Court has observed that all electrical wires are either resistance wires or conductor wires depending upon their characteristics of high resistance or otherwise to the flow of electrical current. According to the High Court, the expression ''electrical resistance wires'' in Item 73(23) has to be considered keeping in view the word ''Nichrome'' which precedes the expression and, therefore, what is intended to be included are electrical resistance wires of the Nichrome type, i.e., base having high resistance. Having regard to the low resistivity of tungsten, the High Court has held that tungsten wire cannot be treated as electrical resistance wire falling in Item 73(23).

6. Shri Gaurishankar Murthy, the learned Counsel appearing for the Revenue, has urged that since tungsten has a resistance of 5.5, as found it, the High Court itself, and tungsten wire is used for the manufacture of filament for incandescent

lamps, it must be treated as electrical resistance wire falling into Item 73(23) that the finding recorded by the Customs authorities that tungsten wire was classifiable under Item 73(23) cannot be said to be unreasonable or unjustified and the High Court was in error in interfering with the said finding under Article 226 of the Constitution.

7. We are unable to agree with the said contention and hold that Tungsten wire can be regarded as electrical resistance wire falling in Item 73(23). In our opinion, the High Court has rightly found that the Tungsten wire cannot be regarded as electrical resistance wire for the purpose of Item 73(23). The said conclusion finds support from the certificate dated September 1,1972 (Annexure ''H'' to the writ petitions giving rise to Civil Appeal Nos. 5940-48 of 1983) given by the Directorate General of Technical Development wherein it is stated that Tungsten wire which is used for manufacture of filaments is not a resistance wire. There is one more communication dated September 12, 1978 from the Directorate General of Technical Development (Annexure ''D'' to the writ petitions giving rise to Civil Appeal Nos. 3386-3401 of 1983) wherein also it is stated :

Regarding possibility of using tungsten wire as a resistance wire, it is stated that the resistance wires are generally of Nickel Chromium Alloys or Ferrous based alloys and not of tungsten wires suitable for use in tungsten filaments. We are of the opinion that tungsten wires of the grade and quality used for tungsten filaments cannot be used as a resistance wire.

8. In our opinion, the expression ''electrical resistance wires'' in Item 73(23) has to be read along with the ''Nichrome'' which precedes that expression and, if thus read, it can only mean electrical wires having characteristics similar to those of, namely, high resistivity. Keeping in view the low resistivity of Tungsten wire it cannot be regarded as electrical resistance wire falling under Item 73(23). We therefore, find no force in these appeals and the same are liable to be dismissed.

9. Shri Murthy has, however, submitted that these cases have arisen out of applications for refund of duty and that the respondent cannot be permitted to claim such refund in view of the change in the law as a result of amendment of Section 27 of the Customs Act, 1962 and insertion of Section 28D in the said Act by Act No. 40 of 1991 and that the respondent cannot claim the refund unless it can show that it has not passed on the duty paid by it to the consumer. The High Court, in the impugned judgment, has not given any direction regarding refund of duty to the respondent. In case the respondent makes a claim for refund on the basis of judgment of the High Court and judgment of the Tribunal the same would have to be considered in accordance with law.

10. The appeals are accordingly dismissed. The applications filed by the respondent for taking on record to those objections in the appeals are also dismissed as not maintainable.