(1988) 10 SC CK 0032

In the Supreme Court Of India

Case No : Civil Appeal No. 2129 of 1984

United Offset Process Pvt. Ltd. APPELLANT

Vs

Asst. Collector of Customs, Bombay and Others RESPONDENT

Date of Decision : 14-10-1988

Acts Referred:

Citation : AIR 1989 SC 622 : (1989) 1 CompLJ 53 : (1988) 18 ECC 473 : (1988) 19 ECR 571 : (1988) 38 ELT 568 : (1989) 4 JT 198 : (1988) 2 SCALE 1022 : (1989) 1 SCC 131 Supp : (1988) 3 SCR 531 Supp : (1989) 74 STC 81 : (1989) 1 UJ 117

Hon'ble Judges : Sabyasachi Mukherjee, J;K. Jagannatha Shetty, J

Bench : Division Bench

Advocate : Harish Salve, H. Wahi and Rajiv Shakdhar, for the Appellant; V.C. Mahajan, C.V. Subba Rao and Arun Madan, for the Respondent

Final Decision : Disposed Of

Judgement

Sabyasachi Mukharji, J.—This is an appeal u/s 130E(b) of the Customs Act, 1962 (hereinafter called 'the Act') which arises from the judgment and order dated 13th March, 1984 passed by the Customs Excise and Gold (Control) Appellate Tribunal (hereinafter called 'the Tribunal'). The appellant imported Colour Scanner Chromagraph C-299 by air on 20.4.1980. The same is allowed to be imported under Appendix 2 of the Import Policy for the year 1981-82 (under the caption "printing machinery" at 12(3) of Appendix 2 of the Import Trade Control Policy for the year 1981-82). The appellant filed the Bill of Entry for clearance under Tariff Item 84.35. The Assistant Collector divided the imported Chromograph C-299 under 4 sub-heads in the Bill of Entry and assessed the same under Tariff heading 90.25(i) and levied customs duty thereon at the rate of 40% plus 5% auxiliary duty plus 8% c.v.d. The appellant cleared the cargo after payment of duty as assessed on 13.5.1980. The Assistant Collector of Customs, thereafter, on 26th July, 1980 sent a Less Charge Demand for a sum of Rs. 7,60,032.72 on the ground that Colour Scanner is assessable under the heading 90.10 at the rate of 100% plus 20% plus c.v.d at the rate of 8% as against the original assessment under the heading 90.25(i) and issued the said notice u/s 28 of the Customs Act to show cause why the amount should not be recovered. In reply forwarded by the appellant on 28.8.1980, it was stated that the imported scanner is used only in printing industry and definitely not used in photography or cinematography laboratories. It never produces copies of any document either by photography or by thermo copying process. The appellant's contention was that this colour scanner being intended to analyse the colour of a composite transparency or colour bromide and finally produce four different positives and negatives on graphic art films and that the colour scanner also analyses any transparency into four basic colours viz., yellow, magenta, black and blue. The appellant further contended that the colour scanner imported was capable of being used as ancillary equipment in the printing industry only. The assessing authorities, however, as mentioned hereinbefore, did not accept this contention and had inserted heading 90.25 (i) of the Customs Tariff Act. The appellant-dealer was contending that the said goods would only be classified either under Entry 84.35. The Tribunal held that the said goods could not be classified under Entry 84.35. The Tribunal found that the classification of the goods by the appellant under Entry 84.35 could not be sustained if the catalogue submitted was analysed which provides as follows:

We present the new Chromograph 299 or all scanner and process camera operators, and hope to help in snaping the future of your process operations. Let us state at the outset that the Chromograph 299 does not replace the expert operator. But with this modern high-performance "tool" he can more effectively and more economically apply his know-how to production.

2. The Tribunal also found in another portion of the catalogue that:

The Chromograph 299 produce colour separations rapidly and reliably without accessory equipment and without intermediate negatives or colour duplicates. This means reduced material costs and at the same time increased productivity.

3. Entry 84.35 refers only to "other printing machinery". The Tribunal was right in holding that the particulars gathered from the catalogue did not indicate that the machinery in question could be called as one ancillary to printing. It was urged by the appellant before the Tribunal that in trade and industry and in scientific and technological parlance that equipment is used in printing industry only. There is, however, no evidence or clear proof to that effect. As mentioned hereinbefore, the function of the scanner was only to prepare colour separation sets which might be useful for printing. The Tribunal also considered Entry 19.07 and held that it did not apply in the instant case because it was not a camera; much less a photographic camera. The Tribunal also referred to the contention about Entry 19.25 and on analysis came to the conclusion that the said goods could not be considered such goods as to attract duty under Entry 19.25. The Tribunal on an analysis was of the opinion that the only possibility left was that of Entry 19.10 under which the goods would attract duty. The Tribunal was of the opinion that if the scanner was an apparatus or equipment used in photographic

and cinematographic laboratories then this heading would be appropriate. The Tribunal on an analysis of the evidence found that the scanner produces colour separation rapidly without intermediate negative or colour duplicates. In that view of the matter the Tribunal was of the opinion that the machinery would come under Entry 19.10. In this connection, the Tribunal also referred to Notification No. 36/81. There, it has been stated that exemption has been granted for import of such machines when used in printing industry. The exemption was also sought on behalf of the appellant under Notification No. 112/77. However, the Tribunal pointed out that that notification would be applicable only to machines attracting duty under Entry 84.35. Further, this notification contemplated "process cameras within its ambit". It was conceded on behalf of the appellant that the colour scanner imported was not a process camera. In the premises, the Tribunal was of the opinion that it was assessable under Entry 19.10.

4. The question involved in this matter is as to what is the proper tariff entry under which the goods in question fall and are as such classifiable. There is no specific technical definition as such provided in the Customs Tariff Act or in the notification. If there is no meaning attributed to the expressions used in the particular enacted statute then the items in the customs entries should be judged and analysed on the basis of how these expressions are used in the trade or industry or in the market or, in other words, how these are dealt with by the people who deal in them, provided that there is a market for these types of goods. This principle is well-known as classification on the basis of trade parlance. This is an accepted form of construction. It is well-known principle that if the definition of particular expression is not given, it must be understood in its popular or common sense, viz., in the sense how that expression is used everyday by those who use or deal with those goods. See, in this connection, the observations of this Court in Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, . In incorporating items in the statutes like Excise, Customs or Sales-tax whose primary object is to raise revenue and for which to classify diverse products, articles and substance, resort should be had not to the scientific and technical meaning of substance but to their popular meaning, viz., the meaning attached to these expressions by those dealing in them. See the observations in King v. Planter's Company [1951] CLR 122 and Two Hundred Chests of Tea [1824] 6 L.ed. 128. In the former case, Justice Cameron referred to the reason for the adopting the test of commercial understanding in respect of the tariff items of an Excise Act and observed that the legislature did not suppose our merchants to be naturalists, or geologists, or botanists. These principles were adopted by this Court in State of West Bengal and Others Vs. Washi Ahmed and Others, . See also Union of India v. Delhi Cloth & Gen. Mills [1963] Suppl. 1 SCR 586 and Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola, . See also South Bihar Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others, . This principle was reiterated by this Court by Bhagwati, J., as the learned Chief Justice then was, in Porritts and Spencer (Asia)

Ltd. Vs. State of Haryana, .

5. However, in the instant case, as noticed above, there is no evidence as to how these goods are dealt with in the trade or industry. There is no technical definition of the expressions used. In that view of the matter, in our opinion, the true approach of the Tribunal should have been to find out the correct meaning of the items, i.e., the meaning attributed to the expressions used by those dealing with it in the trade.

6. The Tribunal should now find that out. In that view of the matter we allow the appeal, set aside the order of the Tribunal and remand the matter to the Tribunal with the direction to find out how these goods are dealt with by the people who deal in them after giving both sides due opportunity of adducing evidence and then decide the question according to this Judgment.

7. The appeal is disposed of accordingly. There will be no order as to costs