(1988) 09 GUJ CK 0010

In the Gujarat High Court

Case No : Spl. Civil Application No''s. 4656 and 4658/86 and 1139/87

Windel Submersible Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 07-09-1988

Acts Referred:

Citation : (1993) 45 ECR 60 : (1989) 23 ECR 117 : (1992) 61 ELT 421

Hon'ble Judges : P.M. Chauhan, J;A.M. Ahmadi, J

Bench : Division Bench

Advocate : Kamal Trivedi, for Trivedi, Gupta and Dave, for the Appellant; K.A. Mehta, Senior Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

A.M. Ahmadi, J.—These three petitions which raise common questions of law and fact are heard together and we now proceed to dispose them of by this common judgment. The brief facts are that the petitioner-companies are engaged in the manufacture of monoblock pumps which according to them fall under Tariff Item 30A of the First Schedule to the Central Excises and Salt Act, 1944 (hereinafter called "the Act"). The petitioner-companies also manufacture a variety of stators and rotors of different horse-powers for captive consumption used in the manufacture of monoblock pumps. The stators and rotors used in the manufacture of monoblock pumps are, according to the petitioners, nothing but parts of the said pumps. The short controversy between the assessee and the revenue is, whether these stators and rotors constitute parts of electric motors falling within Tariff Item 30D or electric motors falling under Tariff Item 30A. The revenue proceeding on the premise that those stators and rotors would be assessable as electric motors under Item 30A issued show cause notices produced at Annexures "B" and "C" in Special Civil Application No. 4656 of 1986 and Annexures "B" (collectively) in the other two petitions calling upon the petitioners to show cause why the difference in duty based on the difference in value of the manufactured goods should not be recovered from them. The petitioners challenge the legality and the validity of the said show cause notices issued by the concerned revenue authority.

2. The petitioners rely on a circular issued by the Central Government dated 4th February, 1981 produced at Annexure "P to the first petition. That circular was issued pursuant to a doubt having arisen whether duty should be charged on electric motors or rotors and stators used in the manufacture of monoblock pumps falling under Tariff Item 30A. After inviting attention to the Board''s letter dated 31st March, 1967 wherein it was clarified that stators and rotors forming part of any driving mechanism built into any such machine have to pay duty under Tariff Item 30(4), presently Tariff Item 30D, prior to their removal for use as component parts. It was reiterated that in the case of monoblock pumps where electric motor does not come into existence in an identifiable manner and is not separable, its classification under Tariff Item 30 may not be warranted. It was, therefore, stated that rotors and stators forming component parts of monoblock pumps in question will have to pay duty under Item 30(4) (presently Item 30D) before their removal for manufacture of monoblock pumps. The Baroda Collectorate thereafter issued a Trade Notice No. 110/81 dated 1st May, 1981 stating that although electric motor as such does not come into existence independently in such instances, the manufacture of rotors and stators cannot be denied. The rotors and stators forming component parts of monoblock pumps will, therefore, have to pay duty under Tariff Item 30A before their removal for the manufacture of monoblock pumps, Thus the trade notice issued by the Collector ran counter to the circular letter of 4th February, 1981. On the basis of the classification list filed by the petitioners, the Assistant Collector of Central Excise passed an order, Annexure "H" in the first petition. After referring to the clarification issued by the Government of India, Ministry of Finance (Department of Revenue) New Delhi, vide their letter dated 4th February, 1981 and the Trade Notice No. 110/81 dated 1st May, 1981 issued by the Baroda Collectorate, the Assistant Collector did not approve the petitioner''s classification list and directed the petitioner to pay duty on rotors and stators under Tariff Item 30D before their removal for the manufacture of monoblock pumps. The Assistant Collector also came to the conclusion that the exemption claimed under the provisions of Notification No. 73/68 dated 13th April, 1968 was not admissible to the petitioners so far as monoblock pumps were concerned. On the strength of the finding recorded by the Assistant Collector that rotors and stators were liable to duty under Tariff Item 30D the petitioner filed an application for refund of excess duty. At the same time the petitioners were aggrieved by the order as the benefit of the exemption Notification No. 73/68 was denied to them. The petitioner, therefore, filed an appeal against the said order before the Collector of Central Excise (Appeals), Bombay. The Assistant Collector of Central Excise Division III, Ahmedabad sanctioned refund as per his orders, Annexure "I" in the first petition. So far as the appeal preferred against the Assistant Collector''s order was concerned, the same came to be rejected by the Collector of Central Excise (Appeals), Bombay, by his order dated 5th May, 1984. Against this order the

petitioner preferred an appeal to the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi. That appeal came to be dismissed by the order of 5th April, 1988. In view of the above, it is now obvious that the rotors and stators used in the manufacture of monoblock pumps fall within Tariff Item 30D and not 30A. That being so, the impugned show cause notice issued by the concerned revenue officer against the petitioners calling upon them to show cause why rotors and stators should not be assessed to duty under Tariff Item 30A will not survive. Mrs. Mehta, the learned Senior Central Government Standing Counsel is unable to contend otherwise. With effect from 1st March, 1986 electric motors and parts suitable for use solely and principally with electric motors fall under Headings 85.01 and 85.03 respectively of the new Tariff. Heading 85.01 refers to electric motors and generators (excluding generating sets) whereas Heading 85.03 refers to parts suitable for use solely and principally with the machines of Heading No. 85.01 or 85.02. We are not concerned with the goods described in Heading 85.02. Rotors and stators being parts suitable for use with electric motors would fall within Heading 85.03 and be liable to duty at the rate specified in column (4). Mr. Trivedi, the learned advocate for the petitioners concedes the fact that rotors and stators manufactured for use in monoblock pumps would be liable to duty under Heading 85.03 in view of the concluded controversy by the Tribunal''s order of 5th April, 1988 rejecting the appeal of the petitioner in the first petition.

3. In view of the above, these petitions must succeed. The show cause notices, Annexure "B" and "C in the first petition and Annexures "B" (collectively) in the other two petitions cannot survive in view of the decision of the Tribunal and must, therefore, be quashed and set aside. The rule is made absolute accordingly in each of the petitions with no order as to costs. The interim orders, however, do not survive.

