The Siemens Engineering & Manufacturing Co. of India Ltd.

Vs

The Union of India and Another

Civil Appeal No. 1277 of 1968

(P.N. Bhagwati, A.C. Gupta, Syed M. Fazal Ali JJ)

30.04.1976

JUDGMENT

BHAGWATI, J. -

1. This appeal by special leave raises a short question as to what is the correct amount of import duty chargeable on pot motors when imported separately from rayon spinning frames : do they fall within item 72(3) or item 73(21) of the First Schedule to the Indian Customs Tariff ? The facts giving rise to the appeal are few and may be briefly stated as follows.

2. Sometime in 1956 a licence for setting up a plant for manufacture of rayon was granted to one Kesoram Industries & Cotton Mills Ltd. under the Industries Development and Regulation Act, 1951. Since the machinery and equipment required for setting up the plant were not available in India, Kesoram Industries and Cotton Mills Ltd. applied for an import licence and on the basis of this application, import licence was granted to them for importing "complete continues filament rayon plant ..... with spares and accessories" of the CIF value of Rs. 5.50 crores form general currency area excluding South Africa. It appears that Kesoram Industries & Cotton Mills Ltd. imported, on the strength of this import licence, rayon spinning frames, excluding pot motors, from Japan, but so far as pot motors were concerned, they authorised the appellants to import from Germany 4,000 of these motors for initial installation of the spinning frames. Pursuant to the authority so given the appellants placed orders for 4,000 pot motors with manufacturers in Germany and imported the same in seven different consignments under the import licence of Kesoram Industries & Cotton Mills Ltd. These seven consignments arrived at Calcutta port between September and December 1961. The appellants claimed before the customs authorities at the time of assessment of import duty on these seven consignments that pot motors imported by them fell within item 72(3) of the First Schedule to the Indian Customs Tariff and were chargeable to import duty under that item at the rate of 15 percent of their accepted value. This claim was accepted by the customs authorities and these seven consignments were allowed to be cleared on payment of import duty under item 72(3). However, within a short time thereafter, the Assistant Collector of customs issued seven separate notices of demand in respect of these seven consignments claiming that customs duty at the rate of 15 percent had been short levied, because pot motors were assessable at the rate of 20 percent and requiring the appellants to pay up the difference within 15 days from the date of demand under Section 39 of the Sea Customs Act,1878. The appellants sent representations against these notices pointing out that and we are quoting here from the representation dated December 8, 1961, which is :

> These pot motors are vital component part of the rayon spinning machines already imported and are not in excess of the quantity required for the first installation of the

said plant. The port motors are required for 24 spinning frames having 2 sides each. On each side of these frames, 66 motors are connected. Hence total initial requirement of pot motors for running 24 frames is 3168. In view of general experience with this type of plant approximately 25% additional motors are required for trial runs and commissioning 4,000 nos., of pot motors should, therefore, be supplied for first installation of the rayon plant.

These pot motors are of very high speed and are specially designed for use in spinning frames for manufacturing rayon thread. They run at 7700 r.p.m. and are designed for a rated voltage of 130 V at 130 cycles per second for use in circuits of less than 10 amps. As such, these motors can in no circumstances be used for any other purpose excepting as stated above.

The accessories of these motors are specially designed to suit particular size of spinning pots as well as spinning chambers. The smooth running of these motors is achieved after a great research by using flexible elastic and hollow shaft, special rubber bushings for support as well as specially designed bearings, to take care of severe stresses, which are normally encountered by these motors during operation.

Hence, it is inevitable that any deviation in the design of the above component parts would mean defeating the purpose for which these motors are meant.

In view of the above, these motors cannot be classified other than an integral part of the rayon spinning plant.

We, therefore, claimed as assessment of duty under proviso 72(3) at the time of clearing.

The appellants did not receive any reply from the Assistant Collector in regard to these representations for a period of about three years and hence they thought that their representations had been accepted and the demand for differential duty had been dropped. This, however, turned out to be a vain hope, for seven communications dated January 19, 1965 were received by the appellants from the Assistant Collector stating that the demand for differential duty in respect of each of the seven consignments was confirmed and would be enforced in due course if the differential duty was not paid by the appellants. Each of these seven communications contained an intimation that "an appeal against this decision lies to the Appellate Collector within three months hereof". The appellants, however, did not prefer an appeal to the Collector and instead tried to persuade the Assistant Collector to change his opinion by pointing out the relevant facts. It appears that in the meantime the Assistant Collector recovered the aggregate amount of the differential duty from the deposit account of the appellants. The appellants once again made a representation to the Assistant Collector and requested him to refund the amount of differential duty collected by him but the representation did not meet with any favourable response from the Assistant Collector. The appellants ultimately filed a representation to the Collector on July 15, 1965 setting out their case in regard to the assessment of customs duty and pointing out that the original assessment of customs duty made under item 72(3) was correct and that the differential duty had been wrongly recovered from them. This representation was treated by the Collector as a revision application against the orders of the Assistant Collector and on this application, the Collector made an order which was conveyed to the appellants by the Assistant Collector by his letter dated December 23, 1965. The Assistant Collector pointed out that the Collector had examined the merits of the case in question and it is his consideration that the duty was correctly chargeable because the spinning machinery excluding the pot motors were being imported under one contract from Japan and the pot motors

were being imported under another contract from Germany. Separate importation under a separate contract from a separate country would not justify treatment of the two consignments as one article, when the goods are not specified in the Tariff as one article. Therefore, he does not see any reason to revise the Assistant Collector's order concerning the demands.

The appellants thereupon preferred a revision application to the Government of India, but by a short and pithy order dated September 23, 1967, the Government of India rejected the revision application stating that they had carefully considered the revision application but saw no reason to interfere with the order passed by the Collector. This led to the filing of the present appeal against the order of the Government of India with special leave obtained from this Court.

3. Though the appellants, initially, when the hearing of the appeal commenced, raised two or three contentions against the validity of the order of the Government of India confirming the demand for differential duty, they ultimately pressed only one contention and that related to the category in which the pot motors imported by the appellants fell. The Assistant Collector originally assessed these pot motors to customs duty at the rate of 15 per cent of their accepted value under item 72(3), but later, demanded differential duty from the appellants on the footing that these pot motors were really assessable at the rate of 20 per cent of their accepted value under item 73(21) and this demand was confirmed by the Collector in revision and on further revision, by the Government of India. The appellant disputed the correctness of these orders and contended that the original assessment made by the Assistant Collector was proper and the demand for differential duty was unjustified, because the correct item under which these pot motors were assessable was item 72(3), and not item 73(21). Item 72(3), as it stood at the material time, was in the following terms :

> 72. (3) Component parts of machinery as defined in item Nos. 72, 72(1) and 72(2) and not otherwise specified, essential for the working of the machine or apparatus and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose but excluding small tools like twist drills and reamers, dies and taps, gear cutters and hacksaw blades :
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> Provided that articles which do not satisfy this condition shall also be deemed to be component parts of the machine to which they belong if they are essential to its operation and are imported with it in such quantities as may appear to the Collector of Customs to be reasonable.

While item 73(21) comprised "Electric motors, all sorts, and parts thereof". The competition was between these two items and the question is which of them covered pot motors imported by the appellant.

4. Now, pot motors imported by the appellants were clearly component parts of rayon spinning machines and this was not and indeed could not be disputed on behalf of the respondents. Since rayon spinning machines were admittedly textile machinery as defined in item 72(1), these pot motors were covered by the opening part of item 72(3), namely, "component parts of machinery as defined in item Nos. . . . . 72(1) . . .". Moreover, these pot motors were clearly and indubitably essential for the working of the rayon spinning machines and, as pointed out by the appellants in their representation dated December 8, 1961, they were "specially designed for use in spinning frames for manufacturing rayon thread" and for the purpose, they were given special shape and quality which was not only not essential for their use for any other purpose but actually rendered them incapable of being used for any other purpose. This position, as pointed out by the appellants

in their representation dated December 8, 1961, was not disputed either by the Assistant Collector in his communication dated January 19, 1965 or by the Collector in his order dated December 23, 1965 rejecting the representation of the appellants and the Government of India also did not controvert this position in its order dated September 23, 1967. If the Assistant Collector or the Collector or the Government of India did not accept the facts set out in the representation of the appellants dated December 8, 1961, we should have expected a clear statement to that effect in the orders of these authorities. The Assistant Collector maintained sphinx like silence and preferred not to give any reasons for confirming the demand for differential duty. The Collector was a little less reticent. He briefly gave a reason for confirming the orders of the Assistant Collector, but that reason had nothing to do with the nature, quality or condition of the pot motors. What it said was this, namely, that the pot motors were imported under a separate contract from Germany while the spinning machinery excluding pot motors were imported from Japan and that did not "justify the treatment of two consignments as one article". The Government of India also did not articulate its reasons while rejecting the revision application of the appellants, but since it confirmed the order of the Collector, we may presume that the same reason which prevailed with the Collector appealed to the Government of India. It will, therefore, be seen that at no stage was the factual position in regard to the pot motors, as set out in the representation of the appellants dated December 8, 1961, disputed by the Assistant Collector of Customs or the Collector or the Government of India. The pot motors, therefore, clearly fell within the description given in item 72(3).

5. The respondents, however, leaned heavily on the words "not otherwise specified" in item 72(3) and contended that even if the pot motors were component parts of rayon spinning machines, they were not covered by item 72(3), since they were otherwise specified in item 73(21). The argument of the respondents was that if any component parts of machinery were specifically dealt with in any other item, they would go out of item 72(3) and since pot motors were electric were electric motors within item 73(21), they were not covered by item 72(3). This argument is clearly unsustainable. It seeks to read the words "not otherwise specified" as qualifying "component parts" but that is plainly incorrect as a matter of both grammar and language. Structurally, the conjunction 'and' joins the two clauses "as defined in item Nos. 72, 72(1) and 72(2) "and" not otherwise specified" and since the former qualifies 'machinery', the latter also must be read as doing the same duty. What item 72(3) contemplates are component parts of that machinery which is defined in item Nos. 72, 72(1) and 72(2) and which is not otherwise specified. The words 'not otherwise specified' do not qualify "component parts" : they qualify 'machinery. Otherwise, the conjunction 'and' would have no meaning. In fact, the sentence would become ungrammatical if the words "not otherwise specified" were read to govern "component parts". This construction also receives support from the description of the component parts which follows the words 'not otherwise specified'. This description starts with the word 'namely', which shows that it is intended to be a complete description of the component parts covered by this item and that would not contextually fit in with "component parts . . . not otherwise specified". There can be no doubt that on a plain grammatical construction, the words "not otherwise specified" qualify "machinery and not "component parts" and, therefore, the pot motors imported by the appellants, which satisfied the other requirements of item 72(3) could not be held to fall outside that item, because they were otherwise specified in item 73(21). Item 72(3) is a specific item which covers these pot motors as against item 73(21) which is a general item and hence it must be held that these pot motors were assessable under item 72(3) and not under item 73(21). The original assessment of these pot motors made by the Assistant Collector was, in the circumstances, correct and the subsequent demand of differential duty made by the Assistant Collector and confirmed by the Collector in revision and by the Government of India on further revision, was unjustified. The orders made by the Assistant Collector, the Collector and the

Government of India confirming the demand for differential duty would, therefore, have to be quashed and set aside and the amount of differential duty recovered from the appellants pursuant to these orders would have to be refunded to the appellants.

6. Before we part with this appeal, we must express out regret at the manner in which the Assistant Collector, the Collector and the Government of India disposed of the proceedings before them. It is incontrovertible that the proceedings before the Assistant Collector arising from the notices demanding differential duty were quasi-judicial proceedings and so also were the proceedings in revision before the Collector and the Government of India. Indeed, this was not disputed by the learned Counsel appearing on behalf of the respondents. It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with N. M. Desai v. Testeels Ltd. (C.A. No. 245 of 1970, dec, on December 17, 1975) But, unfortunately, the Assistant Collector did not choose to give any reasons in support of the order made by him confirming the demand for differential duty. This was in plain disregard of the requirement of law. The Collector in revision did give some sort of reason but it was hardly satisfactory. He did not deal in his order with the arguments advanced by the appellants in their representation dated December 8, 1961 which were repeated in the subsequent representation dated June 4, 1965. It is not suggested that the Collector should have made an elaborate order discussing the arguments of the appellants in the manner of a court of law. But the order of the Collector could have been a little more explicit and articulate so as to lend assurance that the case of the appellants had been properly considered by him. If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. The Government of India also failed to give any reasons in support of its order rejecting the revision application. But we may presume that in rejecting the revision application, it adopted the same reason which prevailed with the Collector. The reason given by the Collector was, as already pointed out, hardly satisfactory and it would, therefore, have been better if the Government of India had given proper and adequate reasons dealing with the arguments advanced on behalf of the appellants while rejecting the revision application. We hope and trust that in future the customs authorities will be more careful in adjudicating upon the proceedings which come before them and pass properly reasoned orders, so that those who are affected by such orders are assured that their case has received proper consideration at the hands of the customs authorities and the validity of the adjudication made by the customs authorities can also be satisfactorily tested in a superior tribunal or court. In fact, it would be desirable that in cases arising under customs and excise laws an independent quasi-judicial tribunal, like the Income-tax Appellate Tribunal or the Foreign Exchange Regulation Appellate Board, is set up which would finally dispose of appeals and revision applications under these laws instead of leaving the determination of such appeals and revision applications to the Government of India. An independent quasi-judicial tribunal would definitely inspire greater confidence in the public mind.

7. We accordingly allow the appeal, set aside the orders passed by the Assistant Collector, the Collector and the Government of India demanding differential duty from the appellants and direct the Government of India to refund to the appellants the amount of differential duty recovered from the appellants in respect of the seven consignments of 4000 pot motors imported by them. The respondent will pay the costs of the appeal to the appellant.

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