

Indian Aluminium Cables Ltd.

Vs

Union of India and Others

Civil Appeals Nos. 2729 and 2730 of 1982

(CJI Y. V. Chandrachud, R.S. Pathak, Sabyasachi Mukharji JJ)

27.05.1985

JUDGMENT

Y. V. CHANDRACHUD, C.J. -

1. se two appeals involve the question as to whether 'Properzi Rods' manufactured and cleared by the appellant, the Indian Aluminium Cables Ltd., fall within Entry 27(a)(ii) of the First Schedule to the Central Excises and Salt Act, 1 of 1944 and, if so, under which category of the articles mentioned therein. The Government of India contends for the application of that entry while, according to the appellant, 'Properzi Rods' fall under the residuary Entry 68. Civil Appeal No. 2729 of 1982 arises out of a judgment dated May 7, 1982 of the High Court of Delhi in Civil Writ Petition No. 934 of 1972. Civil Appeal No. 2730 of 1982 is directed against Order No. 162 of 1982 passed by the Government of India in a revision application against the order dated September 7, 1982 passed by the Appellate Collector of Central Excise, New Delhi. Order No. 162 of 1982 of the Government of India was passed by the Additional Secretary and the Joint Secretary, Government of India, in its Ministry of Finance, Department of Revenue.

2. The appellant Company carries on the business of manufacture and sale of aluminium conductors used for the purpose of transmission of high voltage electric current. One of its factories is situated at Faridabad, in the State of Haryana. The affidavits filed by the appellant show that there are three different manufacturing techniques by which rods are obtained : by extrusion, by conventional rolling and by the Properzi method. In the extrusion process, rods are manufactured by forcing the metal through a sized die. In the conventional rolling process, billets of definite weight are first cast. Thereafter, they are pre-heated well above the recrystallization temperature in a loop mill, where the rods are coiled in between two passes to compensate exothermic heat produced by rolling. In the Properzi method, aluminium ingots are charged in melting furnace, each charge consisting of 2500 pounds which takes about 30 minutes for melting. After the ingots are subjected to the melting process, the aluminium is transferred to the holding furnaces, from where it is taken to the holding pot. The metal which is poured is cooled by water sprays, as a result of which it is solidified and emerges in the form of a continuous bar. The bar is rolled and comes out in the form of a hot rolled rod of 9.5 mm. diameter in continuous length. This rod is known as Properzi Rod.

3. The First Schedule to the Act of 1944 contains 68 entries, the last of which, Entry No. 68 is, broadly, in the nature of a residuary entry. It will be necessary to go to that entry only if the Properzi Rods with which we are concerned in these appeals, do not fall under Entry No. 27(a)(ii), as is contended on behalf of the Government. That entry reads as follows :

Aluminium -

(a)(ii) wire bars, wire rods and castings, not otherwise specified.

4. By an Order dated September 1, 1970, the Superintendent of Central Excise, Faridabad, called upon the appellant to clear the Properzi Rods manufactured by it, after payment of duty under Entry 27(a)(ii) of the Central Excise Tariff on the basis that Properzi Rods are aluminium wire rods. Aggrieved by that order, the appellant filed an appeal under Section 35 of the Act, which was dismissed by the Deputy Collector of Central Excise, Chandigarh, on February 7, 1972. The appellant filed a revision against that order under Section 36 of the Act to the Central Government. Simultaneously, the appellant also filed Civil Writ No. 310 of 1972 in the High Court of Delhi, challenging the order of the Deputy Collector. The High Court directed the Government to dispose of the revision application within one month and kept the writ petition pending for admission. The order of the Deputy Collector was set aside by the Government in revision and the matter was remanded to the Appellate Authority for deciding the appeal afresh. In view of the order of remand, the appellant withdrew the writ petition on May 18, 1972. After the remand, the appeal was heard by the Appellate Collector on July 22, 1972. The appellant relied on the affidavits and opinions of experts in support of its case that Properzi Rods fall under the residuary entry and not under Entry No. 27(a)(ii). However, the Appellate Collector dismissed the appeal on September 7, 1972. The appellant filed a revision application against the appellate order and it also filed a writ petition in the High Court of Delhi, being Civil Writ Petition 934 of 1972. Having failed in the revision application as also in the writ petition, the appellant has filed these two appeals.

5. Shri Venugopal, who appears on behalf of the appellant, contends that Properzi Rods are not wire rods within the meaning of Entry No. 27(a)(ii) of the First Schedule to the Act, for the following reasons : (1) Commercially, Properzi Rods are not known as wire rods in the trade. A person wanting to purchase Properzi Rods asks specifically for Properzi Rods and not for wire rods. (2) Properzi Rods are mainly used for the manufacture of aluminium conductors and cables, while wire rods are used mainly for making nuts, bolts and rivets. (3) A wire rod is limited by its length, while Properzi Rods are only available in coils weighing 500 to 2000 kgs. of continuous length ranging from 2625 metres to 10,500 metres, with a uniform standard thickness of 9.50 mm. diameter. (4) Aluminium wire rods are available not in continuous length but only in short length ranging from 150 metres to 400 metres. (5) Aluminium wire rods are neither accepted nor commercially required for the purpose of manufacturing aluminium conductors and cables. (6) The manufacturers of aluminium wire rods do not have the capacity to manufacture Properzi Rods. (7) The Indian Standards Institution which prescribes specifications for various commercial commodities, has prescribed separate specifications for Properzi Rods and aluminium wire rods. (8) In the Cost Accounting Record (Aluminium) Rules, 1972 prescribed by the Government of India, Department of Company Affairs, Properzi Rods are shown separately from aluminium wire rods, the latter being shown under the description 'other rolled products'. (9) The Properzi process is a specialised process evolved only in the field of aluminium for the manufacture of aluminium rods which are suitable for being used as aluminium cables and conductors. The Properzi process is wholly unknown in the field of manufacture of iron and steel rods.

6. In support of these points, reliance is placed by the appellant upon the expert opinions of Shri V. A. Gadgil, Associate Professor of Metallurgy, College of Engineering, Poona, Dr. K. R. Satyanarayan, Professor and Head of the Department of Metallurgy, College of Engineering, Poona, Dr. R. D. Chaudhari, Professor of Metallurgy, College of Engineering, Poona and Dr. P. R. Khangaonkar, Senior Professor and Head of the Department of Metallurgy, Regional College of Engineering, Nagpur. Reliance is also placed by the appellant on the separate specifications made by the Indian Standards Institution for Aluminium Properzi Rods on the one hand and wire rods on the

other. Finally, the appellant draws sustenance to its case from the affidavits filed by Jashwantraj Gangadas Mehta and Shamseer Singh Parmar, the former being a partner in a concern dealing with the sale and distribution of non-ferrous metals and aluminium products and the latter being a managing partner of a concern which deals with the sale and manufacture of aluminium products. In their affidavits, they have described the qualitative difference between Properzi Rods and wire rods and have stated that, in commercial parlance, the two are considered as distinct items.

7. Turning first to the affidavits of the academics, they lay accent on the basic difference between the process of manufacturing Properzi Rods and the wire rods. That is demonstrated in the affidavits of Shri V. A. Gadgil, Dr. K. R. Satyanarayan and Dr. R. D. Chaudhari, Dr. P. R. Khangaonkar has described with particularity the Properzi process which is adopted by the appellant's plant at Faridabad for manufacturing Properzi Rods. Contrasting the Properzi Process with the extrusion process, Dr. Khangaonkar states in his affidavit that the raw material used in the Properzi process is aluminium ingots whereas it is aluminium billets in the other processes. He concludes that, from an expert's point of view, the Properzi Rods cannot be put in the same category as conventionally rolled aluminium rods. Though we have no doubt that the data contained in these affidavits is based on true facts, we find it difficult to accept that Properzi Rods cannot be described as wire rods merely because the process of manufacturing the two articles is different. It is significant that the appellant itself obtained a license in L-4 form to manufacture "aluminium wire rods". It is only because of the particular process to which the wire rods are subjected, namely, the Properzi process, that the end product is called Properzi Rods. In other words, the genus is 'aluminium wire rods' while the Properzi Rod is a species belonging to that genus. Not only did the appellant obtain a licence to manufacture 'aluminium wire rods' on the strength of which it manufactures Properzi Rods, but the classification list in Form No. 1 submitted by it on October 10, 1969 also declared that the goods manufactured by it were to be warehoused as "aluminium wire rods 3/8". It is somewhat interesting that though the contention of the appellant was that Properzi Rods fall under residuary Item No. 68, the appellant expressed its willingness before us to accept the view of the Additional Secretary in revision that Properzi Rods can fall under the description "casting not otherwise specified" in Entry No. 27(a)(ii) of the First Schedule to the Act. The reason why the appellant has come to the Court appears to be that previously it was enjoying an exemption from payment of excise duty by virtue of Notification No. 46 of 1970 dated March 1, 1970 which was rescinded by Notification No. 74 of 1970 dated March 26, 1970.

8. It may be mentioned that in the Aluminium Control Order issued by Government of India, Ministry of Steel and Mines, Properzi Rods are mentioned as "Wire Rods". In the Circulars issued by Cable and Conductors Manufacturers' Association of India also, such rods are described as "Wire Rods". Undoubtedly, these considerations are not conclusive but, it cannot be denied that they are relevant. They show that Properzi Rods are but a species of wire rods.

9. The specifications issued by the Indian Standards Institution are for ensuring quality control and have nothing to do with the class to which the goods belong in a tariff schedule. Considering the use to which the Properzi Rods are put, they may have to meet a different and higher quality control than the ordinary wire rods. But, that does not mean that Properzi Rods are not comprehended within the expression 'wire rods'.

10. The very affidavits on which the appellant relies show that Properzi Rods are obtained, in the first place, by a process of casting as cast bars, which ultimately come out in the form of rods having a 9.5 mm. diameter. Though the Central Excise Tariff does not give the definition of wire bars or wire rods, the expression 'wire rod' has been defined in the Indian Customs Tariff Guide thus

: "Wire rod is of any shape generally round and between 5 mm. and 14 mm. diameter and is intended for conversion into wire". Wire rods are synonymous with wire bars.

11. From the description of 'Properzi Rod' as contained in the various affidavits filed on behalf of the appellant itself, it is clear that Properzi Rod is a wire rod. Entry No. 27(a)(ii) comprehends "wire bars, wire rods and castings, not otherwise specified". The last clause of this entry, "not otherwise specified" must govern not only the expression 'castings' but the expressions 'wire bars' and 'wire rods' also. Since Properzi Rods, which are a species of wire rods, are not otherwise specified, they would fall under Entry 27(a)(ii).

12. The affidavits to which we have referred assert, particularly those of the two dealers, that in commercial parlance Properzi Rods are not called wire rods and the two are treated as distinct species of goods. Shri Venugopal places strong reliance upon these affidavits and argues that whether a particular item falls under a particular entry must be determined with reference to its description in commercial parlance. This Court has consistently taken the view that, in determining the meaning or connotation of words and expressions describing an article in a tariff schedule, one principle which is fairly well-settled is that those words and expressions should be constructed in the sense in which they are understood in the trade, by the dealer and the consumer. The reason is that it is they who are concerned with it and, it is the sense in which they understand it which constitutes the definitive index of the legislative intention. (See *CST, v. Jaswant Singh Charan Singh* ((1967) 2 SCR 720, 723 : AIR 1967 SC 1454 : 19 STC 469); *Minerals & Metals Trading Corporation of India Ltd. v. Union of India* ((1973) 1 SCR 997, 1002 : (1972) 2 SCC 620); *Dunlop India Ltd. v. Union of India* ((1976) 2 SCR 98, 113 : (1976) 2 SCC 241); *State of U. P. v. M/s. Kores (India) Ltd.* ((1977) 1 SCR 837, 839 : (1976) 4 SCC 477 : 1977 SCC (Tax) 40) and *Delhi Cloth and General Mills Co. Ltd. v. State of Rajasthan* ((1980) 3 SCR 1109, 1115 : (1980) 4 SCC 71 : 1980 SCC (Tax) 348.) The difficulty in applying the principle of these decisions to the instant case is that the contention of the appellant itself in the earlier revision application which was filed by it before the Government of India, was that Properzi Rods had no commercial market as such. That is from the Remand Order No. 764 of 1972 dated May 16, 1972 passed by the Joint Secretary to the Government of India. After the remand, the appellant contended once again before the Appellate Collector of Central Excise and Customs, New Delhi, that Properzi Rods are not "goods" within the meaning of the Central Excise Act since they are neither marketed as such nor are marketable. Commercial parlance assumes importance when goods are marketable. It is therefore not possible to hold that the goods in question are not wire rods. There is preponderating evidence on record to show that they are nothing but a species of wire rods despite the special method of their manufacture and the use to which they are put. We may also add that the statements contained in the affidavits of Jashwantrao Gangadas Mehta and Shamseer Singh Parmar cannot be accepted at their face value. Both of them appear to be dealers in sales and distribution of wire rods. Their affidavits do not show any familiarity with dealings in Properzi Rods. The knowledge claimed by them does not stem from their personal experience but is in the nature of hearsay.

13. To sum up the true position, the process of manufacture of a product and the end use to which it is put, cannot necessarily be determinative of the classification of that product under a fiscal schedule like the Central Excise Tariff. What is more important is whether the broad description of the article fits in with the expression used in the Tariff. The aluminium wire rods, whether obtained by the extrusion process, the conventional process or by Properzi process, are still aluminium wire rods. The process of manufacture is bound to undergo transformation with the advancement in science and technology. The name of the end-product may, by reason of new technological processes, change but, the basic nature and quality of the article may still answer the same

description. On the basis of the material before us, it is not possible to record a positive finding that Properzi Rods and wire rods are treated as distinct items in commercial parlance. Properzi Rod is a wire rod subjected to the Properzi process and is used for transmission of high voltage electric current.

14. For these reasons, we confirm the judgment of the High Court and the order passed by the Government of India in its Finance Department dated March 15, 1982 and dismiss these appeals with costs.

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