M/s. Frick India Ltd.

Vs

Union of India and Others

Civil Appeal No. 3395 of 1982

(S. Ranganathan, V. Ramaswami JJ)

21.12.1989

JUDGMENT

V. RAMASWAMI, J. -

1. The appellants are a public limited company having a factory at Faridabad and engaged in manufacturing air-conditioning and refrigeration equipment of various kinds and descriptions. They are holding a L-4 licence to manufacture goods falling under Tariff Item 29-A of the Central Excise Tariff. As per classification lists submitted from time to time under Rule 173-B of the Central Excise Rules, 1944, the company had declared in Form I that they are engaged in the manufacture of goods falling under sub-items (2) and (3) of Tariff Item 29-A. Against gate pass Nos. 111, 112 and 113 dated January 21, 1970 and gate pass No. 116 dated January 22, 1970 the appellants had cleared from the factory cooling coils, condensers and compressors and supplied the same for putting up a cold storage plant to one M/s. Ravi Cold Storage, Ahmedabad. These parts were manufactured by the appellants in their factory at Faridabad and were cleared by them against the abovementioned gate passes after payment of a duty of Rs. 13,547.20. Against gate pass Nos. 95, 96, 97 and 98 dated January 21, 1969 the appellants had cleared from the factory various parts of refrigerating and air-conditioning appliances and machinery for an ice-factory plant to one M/s. Gujarat Industrial Investment Corporation Limited, Ahmedabad. These parts also were manufactured by the appellants in their factory at Faridabad and were cleared by them against gate passes referred to above after payment of a duty of Rs. 19,336.87.

2. On the ground that parts of the refrigerating and air-conditioning appliances which they have removed under the above said gate passes are not excisable goods falling under Tariff Item 29-A(3), they filed two refund applications. The Assistant Collector of Customs rejected both these applications holdings that the assessment was made correctly. The appellants preferred two appeals against these orders before the Collector of Customs and Central Excise, Chandigarh, who by his common order dated December 20, 1971 dismissed the appeals. Thereafter, the appellants filed writ petition in the High Court of Punjab and Haryana at Chandigarh. This writ petition was dismissed by a learned Single Judge holding that the goods supplied are parts of refrigerating and air-conditioning appliances, that a complete cold storage plant was not supplied to M/s. Ravi Cold Storage, Ahmedabad or M/s. Gujarat Industrial Investment Corporation Ltd., Ahmedabad, and that they will fall clearly within the purview of tariff sub-item (3) of Tariff Item 29-A. An appeal preferred against this judgment was dismissed in limine by a Division Bench.

3. In order to understand the argument of the learned counsel for the appellants, it is necessary to set out Tariff Item 29-A in full at the relevant period, which reads as follows :

#Item No. Tariff Description Rate of duty29-A Refrigerating and Air-Conditioning Appliances and Machinery, All Sorts, and Parts Thereof - (1) Refrigerators and other refrigerating 30 per cent appliances, which are ad valorem ordinarily sold or offered for sale as ready assembled units, such as ice makers, bottle coolers, display cabinets and water coolers (2) Air-conditioners and other air- 30 per cent conditioning appliances, which are ad valorem ordinarily sold or offered for sale as ready assembled units, including package type of air-conditioners and evaporative type of coolers (3) Parts of refrigerating and air- 40 per cent conditioning appliances and ad valorem machinery, all sorts##

4. The argument of the learned counsel for the appellants was that sub-items (1) and (2) deal with refrigerators and other refrigerating appliances and air-conditioners and other air-conditioning appliances respectively which are ordinarily sold or offered for sale as a ready assembled unit. Therefore, in order to bring it within sub-items (1) and (2) such refrigerating and air-conditioning appliances should be complete assembled units and they must also be ordinarily sold or offered for sale as such ready assembled units. The illustrative examples referred to in the two sub-items make this clear according to them. The cold storage plant and ice-factory plant supplied to the factories concerned in this case as such are not such complete assembled units which are ordinarily sold or offered for sale within the meaning of sub-items (1) and (2). From this premise they sought to interpret sub-item (3) as meaning that the goods that are covered by that sub-item are parts of those refrigerating or air-conditioning appliances which in its assembled form would have come as a complete unit under tariff sub-items (1) and (2) of Item 29-A and are manufactured for sale. In other words, they want to restrict the content of sub-item (3) with reference to the items that may fall under sub-items (1) and (2). The further submission was that though in its sweep sub-item (3) may appear to cover all and every part of refrigerating and air-conditioning appliances and machinery of all sorts, the words "and parts thereof" in the heading controlled the meaning and restrict it in the context only to parts of a completed unit which as such completed unit would have come under sub-items (1) and (2) of Item 29-A. In this connection, learned counsel has referred to certain decisions of the High Courts which we will refer to later.

5. By Finance Act of 1961 Items 29-A and 40 were introduced in the First Schedule to the Central Excises and Salt Act, 1944 and those two entries read as follows :

#29-A Air-Conditioning Machinery, All Sorts 20 per cent ad valorem40 Refrigerators and Parts Thereof, such 20 per cent ad valorem as are specially designed for use with Refrigerators##

The Notes on Clauses relating to the relevant clause in the Finance Bill 10 of 1961 stated that Item 29-A proposes to levy an excise duty on air-conditioning machinery and Item 40 proposes to levy an excise duty on refrigerators and "parts thereof".

6. By the Finance Act 2 of 1962 a combined tariff entry in the form prevailing in 1969 and 1970 was introduced and the Notes on Clauses relating to this amendment stated that the proposal is "to combine into one item the present Tariff Items 29-A and 40 relating to 'Air-conditioning Machinery' and 'Refrigerators' respectively as well as to make it more comprehensive". Under the Government of India, Ministry of Finance, Department of Revenue, Notification No. 80/62-Central Excises, dated April 24, 1962 as subsequently amended by Notifications dated December 29, 1962, March 23, 1968 and June 14, 1969 all parts of refrigerating and air-conditioning appliances and machinery other than the "parts" mentioned below were exempt from the payment of excise duty leviable

thereon :

> "(i) Cooling coils or evaporator
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> (ii) Compressor
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> (iii) Condenser
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> (iv) Thermostat
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> (v) Cooling unit, and in the case of absorption types of refrigerators in which there is no compressor, heater including burners and baffles in a kerosene operated absorption type refrigerator
>
> (vi) Starting relay, controls (including expansion valve and solenoid valves) and pressure switches
>
> (vii) Overload protection/Thermal relay
>
> (viii) Cabinet."

There are a number of other notifications also exempting parts of refrigerating and air-conditioning appliances and machinery, intended to be used for various purposes specified in the notifications, such as, use in refrigerating and air-conditioning appliances or machinery which are installed or to be installed in any of the following establishments :

> "1. Computer rooms 2. Research and test laboratories 3. Animal houses 4. Telephone exchanges 5. Broadcasting studios 6. Trawlers 7. Dams 8. Mines and tunnels 9. Thermal and hydel power stations 10. Technical building of Military Engineering service 11. Any hospital run by the Central Government, a State Government, a Local Authority or a Public Charitable Institution 12. Any factory."

Vide the Notification No. 93/76-CE dated March 16, 1976 issued under sub-item (3) of Item 29-A of the First Schedule. There are various other notifications also issued under the same sub-item which covers installation of air-conditioning and refrigerating equipments of almost all categories.

7. The legislative history and the notifications of the government show that sub-item (3) of Item 29-A is a comprehensive provision encompassing within it parts of all sorts of air-conditioning and refrigerating appliances and machinery and the Government of India was issuing notifications of exemptions of the understanding that such parts are covered by sub-item (3). The language used in sub-item (3) is also wide and comprehensive in its application and could not be given a restricted meaning. Sub-items (1), (2) and (3) are independent of each other and mutually exclusive. The scope of sub-item (3) is neither restricted nor controlled by the provisions of sub-items (1) and (2).

8. It is well settled that the headings prefixed to sections or entries cannot control the plain words of the provision; they cannot also be referred to for the purpose of construing the provision when the words used in the provision are clear and unambiguous; nor can they be used for cutting down the plain meaning of the words in the provision. Only, in the case of ambiguity or doubt the heading or sub-heading may be referred to as an aid in construing the provision but even in such a case it could not be used for cutting down the wide application of the clear words used in the provision. Sub-item

(3) so construed is wide in its application and all parts of refrigerating and air-conditioning appliances and machines whether they are covered or not covered under sub-items (1) and (2) would be clearly covered under that sub-item. Therefore, whether the manufacturer supplies the refrigerating or air-conditioning appliances as a complete unit or not is not relevant for the levy of duty on the parts specified in sub-item (3) of Item 29-A.

9. Strong reliance was placed by the learned counsel for appellants on the decision of the Allahabad High Court in Mother India Refrigeration Industries (P) Ltd. v. Superintendent of Central Excise ((1980) 6 ELT 600 (All)). In that case the writ petitioners were the owners of a cold storage plant. The writ petitioners themselves installed and assembled the cold storage plant. Part of the plant consisted of erecting locally what are called cooling coils and condensers. Generally cooling coils and condensers contain a very long length of pipes made in a particular shape. The petitioners in that case, however, bought pipes of various lengths, erected them one after the other and joined one with the other with a 'U' shape bend. These bends were welded. The result was that the various pipes constituted an unit in designing the plant. This part of the plant was necessary in order to pass the cooling gas through it and thereby cool the chambers of the storage. The petitioners bought the pipes and the bends from the market and got them placed at the factory site and got them welded. The department, in the view that the conglomeration of pipes manufactured by the petitioner, constituted manufacture of cooling coils which are parts of refrigerating and air-conditioning appliances and machinery covered by Item 29-A(3) called upon the petitioners to pay excise duty on its value. All the authorities found that the erection and installation by the petitioners, by laying pipes and joining them by welded bends, amounted of the manufacture of cooling coils and condensers as known to refrigeration technology. The High Court accepted these findings. However, it held that parts of refrigerating and air-conditioning appliances which answer the description given in sub-items (1) and (2) alone are liable to duty under Item 29-A(3) and not all parts used in refrigeration technology. The learned Judges reached this conclusion on the grounds that :

> The heading of entry 29-A makes it clear that only parts of such refrigerating and air-conditioning appliances and machinery as are covered by sub-entries (1) and (2) alone are liable to duty. In other words, the parts in question should be such as are ordinarily sold or offered for sale as ready assembled units. On any other interpretation the words 'thereof' occurring in the heading 29-A will be redundant. An interpretation which makes any part of a statute redundant has to be discarded.
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> and that
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> When an entry in the schedule specifically refers to and restricts the applicability of duty to goods which are assembled units and which are generally offered for sale, the concept of sale is necessarily brought in. As already seen, sub-entry (3) takes its colour from sub-entries (1) and (2) because of the specific directive of the heading by using the words 'parts thereof'.

We are afraid that both these reasons are fallacious and not acceptable. As already stated neither can sub-entry (3) be said to take its colour from sub-entries (1) and (2) nor could those sub-entries or heading curtail the plain meaning of the words used in sub-entry (3). We, therefore, hold that the Mother India Refrigeration Industries Pvt. Ltd. v. Superintendent of Central Excise case ((1980) 6 ELT 600 (All)), was wrongly decided and accordingly we overrule the same. The learned Judges have also relied on a Tariff Advice dated September 30, 1969 given under the Customs Act for the purpose of levying countervailing duty. We shall deal with this question when we consider the Tariff

Advice in a later part of this judgment.

10. The decisions of the Bombay High Court in Blue Star Ltd. v. Union of India ((1980) 6 ELT 280 (Bom)) and Joy Ice Cream, Bombay v. Union of India ((1989) 39 ELT 521 (Bom)), related to the scope of Tariff Item 29-A (1) and not Item 29-A (3) with which we are concerned. In the view we have taken that sub-entries (1) and (2) of Entry 29-A cannot control or restrict the meaning of such sub-entry (3) it is not necessary for us to go into the scope of entry 29-A (1) and (2). These decisions, therefore, are of no relevance.

11. The decision of the Kerala High Court in Calicut Refrigeration Co. v. Collector of Customs & Central Excise, Cochin ((1982) 10 ELT 106 (Ker)), also does not touch upon the question with which we are concerned. The decision in Chhibramau Cold Storage v. CEGAT ((1985) 19 ELT 269 (Cegat ND)) and of the Allahabad High Court in Gopal Cold Storage & Ice Factory v. Union of India ((1985) 21 ELT 692 (All)), simply followed the decision in Mother India Refrigerator Industries Pvt. Ltd. v. Superintendent of Central Excise ((1980) 6 ELT 600 (All)) and, therefore, they do not advance the case any further.

12. On the other hand, we have a decision of the Gujarat High Court in Anil Ice Factory v. Union of India ((1984) 15 ELT 333 (Guj)), wherein M. P. Thakkar, C.J., as he then was, referred to the Allahabad High Court judgment and dissenting from it held :

> "On taking a close look at Item 29-A it will be seen that what is printed at the top of the entry as "caption" indicates the nature of the goods covered by the entry. It does no more than indicate what is the nature of the goods which are specified in the said entry. Clauses (1), (2) and (3) are independent of each other. Clause (3) in terms refers to goods which fall within the description of the said entry, namely, "Parts of refrigerating and air-conditioning appliances and machinery, all sorts". It is not disputed that cooling coils and condensers would fall within the category of "appliances and machinery". Counsel however argues that we must first read the scope of clause (1) and clause (2) and draw an inference therefrom that the goods covered by entry (3), will attract excise duty only provided they are manufactured for sale. We see no valid reason for reading the entry in that manner. Each of the three sub-clauses refers to different entries and specifies different rates of duty for the goods falling within the respective entries."

and that

> "As we indicated earlier, in the first place the purpose of the caption is to provide a clue to the nature of the goods which are covered by the entry. But even otherwise if the caption is read in the manner in which it has been worded it does not justify or warrant an inference that it related to goods which are manufactured for the purpose of sale. Entry 29-A adverts to goods which would fall within one or the other of the three classifications specified therein. The description of each category of goods if clearly mentioned in clause (2). So far as clause (3) is concerned the tariff description is "Parts of refrigerating and air-conditioning appliances and machinery". We cannot read the words 'manufactured for sale' in entry (3), by drawing upon the theory of "taking colour" which has no application in a case like the present one. If we inject these words we would be re-writing this section and we would be legislating which we cannot do."

13. The learned counsel for the appellants then relied on the Trade Advice dated September 30, 1969 given by the Central Board of Excise and Customs, New Delhi, in respect of classification of refrigerating machinery and ice-making plant which are not sold or offered for sale as ready assembled unit for purposes of countervailing duty under the Customs Act. After referring the sub-items (1) and (2) of Item 29-A as covering complete plant and equipment which are ordinarily sold or offered for sale as ready assembled units, had stated as follows, with reference to sub-item (3) :

> "Sub-item (3) of Item 29-A of the Central Excise Tariff refers to parts of machinery and appliances and complete plants which cannot be considered as "parts of machinery" would not be classifiable under sub-item (3) to Item 29-A CET also."

As may be seen from this paragraph it consists of two parts, the first portion referring to parts of machinery and appliances and the second portion referring to complete plants which cannot be considered as parts of machinery. The whole argument arose because of the composite sentence used in this paragraph. It only means complete plants which are covered by sub-items (1) and (2) cannot be considered as parts of machinery and such complete plants would not be classifiable under sub-item (3) of Item 29-A. The reliance placed by the learned counsel on this notification does not in any way advance the case of the appellants.

14. In the foregoing circumstances, the appeal fails and it is dismissed with costs.

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