

Collector of Customs and Others

v.

Kumudam Publications Private Limited and Others

(Supreme Court Of India)

HON'BLE JUSTICE B. P. JEEVAN REDDY HON'BLE JUSTICE S. B. MAJMUDAR

Civil Appeal No. 2941-49 Of 1991 With No. 5002 Of 1989, 1230-36 Of 1991, 2542-85 Of 1987, 209-210, 2023-44 Of 1988, 238-40, 248-53, 278-80 Of 1991 And 670-76 Of 1987 | 05-12-1995

1. This batch of appeals (except Civil Appeals Nos. 2023-44 of 1988 and 670-76 of 1987) are preferred by the Revenue against the various judgments of the Tribunals. Civil Appeals Nos. 2023-44 of 1988 and Civil Appeals Nos. 670-76 of 1987 are preferred by the assesseees. We shall first take up the appeals preferred by the Revenue

2. The respondents who are engaged in printing and publishing of newspapers and news magazines imported, what they called, "printing plates" for the purpose of their business. A dispute arose as to the classification of the said goods. The Assistant Collector took the view that these goods fell under Chapter 37.01/08 of the Customs Tariff whereas the respondents/assesseees case was that they were properly classifiable under Chapter 84 - Chapter Heading 84.34. The Assistant Collector and the Appellate Collector held against the respondents while the Tribunal allowed the appeals preferred by the respondents-assesseees agreeing with their contention that the said goods are properly classifiable under Chapter 84 i.e. Chapter Heading 84.34

3. For deciding the question of classification, we must first know what these goods are. With a view to ascertain the same, the Tribunal thought it proper to direct the parties to go and inspect certain printing establishments and submit an agreed statement of facts as to the nature and character of the goods in question. Accordingly, a team consisting of Shri Ravinder Bhatt, Advocate for the assesseees, Shri J. Gopinath and Shri A. S. Sundar Rajan representing the Revenue, visited the Times of India and the Patriot printing presses situated in New Delhi. They, however, found that these two establishments were no longer

using the goods in question, namely, Toyobo photosensitive nylon printing plates. They found that the Times of India press was using the photosensitive plate which is backed by a steel sheet. The team found that but for the difference in the backing material, the said photosensitive plate backed by steel sheet is no different in substance from the photosensitive nylon printing plate. They then set out the nature, character and functioning of the said plates in the following words "This photosensitive plate with steel backing is subjected to two exposures to ultraviolet rays which results in transfer of the film negative matter to the photosensitive plate. At this stage there is no physical change in the sensitive plate except the exposure which results in the light transmission only. However, the sensitive plate is non-sensitised. This exposed plate is further subjected to chemical processing in nylon washout unit which results in physical images coming in the form of relief on the plate. The plate which has the relief character is directly taken on the printing machine which is actually used for printing of the newspaper. In the photosensitive nylon printing plate used by M/s Kasturi & Sons, the same process is said to have been adopted except that in place of steel mounting/backing in the case of Times of India, they are using certain adhesive type of tapes to position the printing plate on the rotary machine."

On the basis of the above material, the Tribunal held that the printing plates in question are used exclusively for printing purpose though it may be that their use involves photographic principle. They also recorded a finding that in commercial or common parlance these printing plates are dealt with and are known as printing plates and not photographic plates or films. They also referred to the fact that at the time of their clearance they were described as printing plates and not as photographic plates or films

4. Dr. Gauri Shankar Murthi, learned counsel for the appellant-Revenue, submitted that the end use of the goods is not relevant in the matter of determining the classification. According to him what is relevant is the nature and character of the goods and if they have a scientific nomenclature, the scientific literature in their behalf should be the basis. The counsel further submitted that the Board has issued an exemption Notification (No. 161 dated 8-6-1983) exempting photo polymer (relief image) plates falling under Chapter 37 when imported into India for letter press printing in newspaper industry. The contention of the learned counsel is that the goods mentioned in the said notification are the very same goods as are concerned herein, and the

notification treats them as goods falling under Chapter 37. This, he says, must be taken as contemporaneous exposition indicating the understanding of the statutory authority which supports his contention that the goods in question must be classified under Chapter 37. In fact the learned counsel suggested that the respondents have taken advantage of the said notification and, therefore, cannot now contend that the said goods do not fall under Chapter 37. Counsel also relied upon the decision in *Kasturi & Sons Ltd. v. Collector of Customs* (1985 (19) ELT 183 (Trib)) to indicate the nature and character of these goods

5. We find ourselves unable to agree with the learned counsel for the Revenue. Firstly, there is no material placed before us to show that the goods referred to in Notification No. 161 are the same goods as are concerned herein. There is equally no material to show that the respondents-assessees have taken advantage of the said notification. Coming to the question of classification, Chapter Heading 37.01/08 speaks inter alia of photographic plates and film sensitised whether or not exposed or developed. As against this Chapter Heading 84.34 (which is relied upon by the respondents-assessees) speaks of

"machinery, apparatus and accessories for type-founding or type-setting; machinery, other than the machine tools of Heading No. 84.45/48, for preparing or working printing blocks, plates or cylinders; printing type, impressed flongs and matrices, printing blocks, plates and cylinders; blocks, plates, cylinders and lithographic stones, prepared for printing purposes (for example, planed, grained or polished)" *

Actually Chapter 84 deals with machinery, mechanical appliances etc. The agreed report of the team appointed by the Tribunal indicates clearly that these plates are meant for and are used for printing purposes. Whether we look at the end use or to the character and nature of the goods, they are in the main plates employed in the printing of newspaper/magazines. The Tribunal has opined, on the basis of the above material that Toyobo photosensitive nylon printing plates are exclusively used in printing of newspaper and cannot be called photographic plates within the meaning of Chapter 37. They are placed thereunder Chapter Heading 84.34. We are unable to say that the conclusion arrived at by the Tribunal is not correct. It may not also be entirely correct to say that in no case can the end use or function of the goods be relevant on the question of

classification. A three-Judge Bench of this Court has relied upon the function and end use also in determining the classification in *Indian Tool Manufacturers v. CCE 1994 (S3) SCC 632*)

6. In Civil Appeals Nos. 238-40 of 1991, one of the goods in question is "Developing Machines". The Revenue wanted to classify them under Chapter 19 whereas the Tribunal has placed them under Chapter 94. No particular argument has been addressed in this behalf. We, therefore, affirm the Tribunal's view

7. For all these reasons, we see no ground to interfere in the above appeals which are accordingly dismissed. No costs

8. Civil Appeals Nos. 670-676 of 1987 are preferred by the assessee against the order of the Tribunal insofar as it has held that R.C. paper and graphic art films are not classifiable under Chapter 84 but are classifiable under Chapter 37. Having regard to the nature and character of the goods we are of the opinion that the Tribunal was right in holding so. No material is brought to our notice to take a different view. Hence, these appeals also fail and are dismissed accordingly. No costs.