Purewal Associates Ltd.

Vs

Collector of Central Excise

Civil Appeal No. 2800 of 1984

Sundram Fasteners Limited, Madras

Vs

Collector of Central Excise, Madras

Civil Appeal No. 2307 of 1986

(S. B. Bharucha, K. Venkataswami JJ)

01.10.1996

JUDGMENT

VENKATASWAMI, J. –

1. In these appeals a common question, to put it broadly, namely whether the articles manufactured by the respective appellants fall under Tariff Item 52 (Specific Entry) as claimed by the Revenue or under Tariff Item 68 (Residuary Item) of Central Excise Tariff arises for our consideration. We may at once point out that the articles manufactured by the respective appellants are totally different and the decision, therefore, rests upon the kind of articles manufactured by the respective appellants. We, therefore, propose to deal with the facts separately and give our decision thereon.

2. In the first case, i.e. Civil Appeal No. 2800 of 1984 the appellants are manufacturers of watches. In the course of manufacture of watches, the appellants inter alia manufactured four specified articles with which we are concerned, namely, Lid screw, Barrel axle screw, Bridge screw and the Dial key screw. The controversy between the Revenue and the appellants with regard to these four articles was whether these four specified items are classifiable under Item 52 of the Schedule as "bolts, nuts and screws" or Item 68 as "all other goods not elsewhere specified".

3. The Assistant Collector after issuing a show-cause notice to which the appellants promptly sent a detailed reply, decided that the said items fall under Tariff Item 52. On appeal, the Collector (Appeals) after going through the materials placed before him held in favour of the appellants by deciding that the specified items will fall under Tariff Item 68. On further appeal by the Revenue, the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal") in its elaborate order while upsetting the order of the Collector (Appeals) restored the order of the Assistant Collector. Aggrieved by the order of the Tribunal, the present appeal has been preferred under Section 35(L)(b) of the Central Excises and Salt Act, 1944.

4. Mr D.A. Dave, learned Senior Counsel appearing for the appellant, vehemently contended that the Tribunal though elaborately set out the arguments of both sides, misdirected itself while taking

the final decision and consequently reached a wrong conclusion. According to the learned Senior Counsel this Court has time and again upheld that in the matter of construction of entries in the Schedule, the predominant test is the understanding of the entry/article in the trade as well as in common parlance should be preferred rather than its dictionary or technical or scientific meaning. In this case, to substantiate the case of the appellant, evidence from the trade by way of affidavits were filed before the first authority itself namely, the Assistant Collector. In addition to that, an engineer in the employment of the appellant by name Shri Harpreet Singh, gave a detailed description of the functions of each of the four articles under consideration with the object of showing that they did not perform the basic function of fastening but functioned in different ways. Further to buttress the stand of the appellant, reliance was placed on two trade notices issued by the Bombay Collectorate and Punjab Collectorate, namely Trade Notice 127/71 dated 5-7-1971 and Trade Notice 117/79 dated 28-12-1979 respectively. According to the learned Senior Counsel, those trade notices support the case of the appellant. Above all, the learned Senior Counsel contended that a view taken by the Collector (Appeals) in Appeal No. 325/78. C.E. dated 8-5-1978 in Western Coalfields Limited, Bilaspur case which was accepted by the Revenue was pressed into service before the Tribunal and the Tribunal while accepting the view distinguished on facts without appreciating that in principle the case cannot be distinguished. He also submitted that the Revenue notwithstanding the fact that the Collector (Appeals) has taken note of the affidavits filed by the appellants, has not taken any steps to counter the evidence produced by the appellants to the effect that the articles in question are generally understood by the trade not "as screws but as part of watches". The Revenue could have, if so desired, called the deponents of the affidavits for subjecting them to cross-examination. In the circumstances, according to the learned Senior Counsel, the case put forward by the appellants supported by the evidence ought to have been accepted by the Tribunal as done by the Collector (Appeals).

5. Contending the contrary, Shri P.A. Chaudhary, learned Senior Counsel appearing for the Revenue after referring to the order of the Tribunal, in particular paras 24, 35, 37 and 38 to 40 submitted that unless the Tribunal's order is found to be perverse or arbitrary, this Court may not interfere with the conclusion reached by it. The end use will not decide the character of the article as held by this Court in several cases and therefore, the issue cannot be decided with reference to use to which the articles in question were put or for that matter the functions for which the articles were manufactured by the appellants. He also submitted that the appellants themselves called article as 'screws' and where there is a specific entry for the article, namely, Item 52, resort cannot be had to residuary entry by placing reliance on the end use of the articles or referring to the functions of such articles. His further submission was that it is well-settled that trade notice is not binding on the Tribunal and therefore, no reliance can be placed on the trade notice. To a question put to the learned Senior Counsel by the Court whether the abovesaid notices have since been withdrawn, the learned Senior Counsel replied in the negative.

6. After going through the orders of the Assistant Collector, Collector (Appeals) and the Tribunal, we are of the view that the Tribunal has misdirected itself while reaching the conclusion. The Tribunal having rightly taken note of the test laid down by this Court in several decisions that while interpreting the entries in the Schedule, they must be construed as understood in common parlance and words used by the legislature must be given their popular sense viz. that sense people conversant with the subject-matter with which the statue is dealing would attribute to it, failed to pursue the same test in the light of the evidence tendered by the appellants right from the beginning. In this place it would be appropriate to quote a passage from a recent decision of this Court wherein the very Tariff Item 52 came up for consideration. This Court in Plasmac Machine Mfg. Co. (P) Ltd. v. CCE [1991 Supp (1) SCC 57 : (1991) 51 ELT 161] observed as follows : (SCC p. 62, para 15)

"The submission that 'nuts' in Entry 52 are to be understood in the commercial sense is not disputed by the department. It is an accepted principle of classification that the goods should be classified according to their popular meaning or as they are understood in their commercial sense and not as per the scientific or technical meaning. Indo International Industries v. CST [(1981) 2 SCC 528 : 1981 SCC (Tax) 130 : (1981) 8 ELT 325 : (1981) 3 SCR 294] and Dunlop India Ltd. v. Union of India [(1976) 2 SCC 241] have settled this proposition. How is the product identified by the class or section of people dealing with or using the product is also a test when the statue itself does not contain any definition and commercial parlance would assume importance when the goods are marketable as was held in Atul Glass Industries (P) Ltd. v. CCE [(1986) 3 SCC 480 : 1986 SCC (Tax) 620 : (1986) 25 ELT 473] and Indian Aluminium Cables Ltd. v. Union of India [(1985) 3 SCC 284 : 1985 SCC (Tax) 383 : (1985) 21 ELT 3]. In Asian Paints India Ltd. v. CCE [(1988) 2 SCC 470 : 1988 SCC (Tax) 201 : (1988) 35 ELT 3] which was a case of emulsion paint, at para 8 it was said : (SCC p. 473)

'It is well settled that the commercial meaning has to be given to the expressions in tariff items. Where definition of a word has not been given, it must be construed in its popular sense. Popular sense means that sense which people conversant with the subject-matte with which the statue is dealing, would attribute to it.'"

7. It is common ground that the Revenue even at the Tribunal stage has not taken the trouble of countering the evidence in the shape of affidavits by people in the trade even though the Collector (Appeals) has pertinently observed as follows :

"Further, it is also to be observed that while the evidence by way of affidavits produced by the appellants was not relied upon by the Assistant Collector no evidence has been adduced in the order that the screws in question are known as such in the commercial and trade parlance and not as parts of watches."

A sample affidavit reads as follows :

"I, Swarnjit Singh s/o Sunder Singh, Partner of Messrs Sona Trading Co., Josan Market, Hall Bazar, Amritsar hereby solemnly declare and affirm :

1. That we are dealers in watches and we also deal in watches manufactured by Messrs Purewal & Associates Limited, Jubbar - 173225, Dist. Solan (H.P.).

2. That along with watches we also buy the necessary components of the watches purchased by us including those which are manufactured by M/s Purewal & Associates Limited, Jubbar-173225, Distt. Solan (H.P.). The components also include :

(i) Lid Screws

(ii) Dial Key Screws

(iii) Bridge Screws

(iv) Barrel Axle Screws.

3. That the above-named four items are known and identified as components of watch in the trade and not as screws as the name signified.

4. That these items, as other components are supplied by us to watch repairers either engaged in our shop or other watch repairers of Purewal wrist-watches.

5. That the above-named components are neither supplied nor marketed by dealers of screws.

6. That the above-named components can exclusively be used for repairing of Purewal wrist-watches because of their special specification and cannot be used for the repair of watches manufactured by other manufacturers.

7. That the above-named components are not used exclusively as fasteners but also regulate the functions of other components.

I, on behalf of Messrs Sona Trading Co., Josan Market, Hall Bazar, Amritsar declare that the above facts are true to the best of my knowledge and belief and nothing has been concealed therein."

8. The articles in question were produced before us and we say why they cannot be called as 'screws' as generally understood both in common parlance as well as in trade parlance.

9. In this connection, we would like to set out Trade Notice 127/71 dated 5-7-1971 just to highlight how the Excise Collectorate understood Item 52.

> "'Mere existence' of threads would not render an article as a bolt, nut or screw if it is recognisable as component part of an instrument, apparatus, appliance or machine. The tariff definition of Item 52 is intended to cover only those which are known as bolts, nuts and screws in the market."

10. We must take it that before issuing a trade notice sufficient care is taken by the authorities concerned as it guides the traders to regulate their business accordingly. Hence whatever is the legal effect of the trade notice as contended by the learned Senior Counsel for the respondent, the last portion of the above trade notice cannot be faulted as it is in accordance with the views expressed by this Court. Though a trade notice as such is not binding on the Tribunal or the courts, it cannot be ignored when the authorities take a different stand for if it was erroneous, it would have been withdrawn.

11. We would also like to extract a portion from the Tribunal's order with reference to an order of the Collector (Appeals) in Western Coalfields Limited case dated 8-5-1978. It reads as follows :

> "This does not mean that we disagree with the finding in the order dated 8-5-1978 of the Appellate Collector of Central Excise, Delhi, cited by Shri Mathur, in which he had held 9 specified articles as not falling within the scope of Item 52. We would merely observe that the Appellate Collector had in the case of each of those articles gone into its description as well as its function and held that they were not bolts and screws within the meaning of Item 2. Many of them were massive articles, weighing from 21 to 56 kgs each, and one could say even at first sight that such articles would hardly be known in the market as bolts or screws. That case illustrates the type of

> extreme case where an article, although loosely described as a bolt or screw cannot in fact be regarded as a bolt or screw as commonly understood."

12. While the Tribunal was prepared to accept the order of the Appellate Collector dated 8-5-1978 as above, we fail to understand why the same principle has not been applied to the facts of this case. If the screws and bolts because of the size and weight could not be brought under Item 52, the same is the case with articles with which we are concerned. As pointed out earlier the Tribunal by deviating from the correct line of analysis of the issues misdirected itself into various other aspects and ended in wrong judgment. Therefore, we find it difficult to sustain it.

13. In addition to all these facts, we also take note of inaction on the part of the Revenue to produce evidence to show that the articles in question are only known as screws in the trade parlance. We may also point out that in the connected case CA No. 2307 of 1986 the Revenue has produced evidence before the Tribunal to counter the claim of the assessee therein. No such attempt has been made here.

14. In the circumstances, taking all the abovesaid factors into consideration, we are of the view that the articles under consideration did not fall within Item 52 of the Tariff Items Schedule and there being no specific entry, they fall under Tariff Item 68.

15. Consequently we allow the appeal, set aside the order of the Tribunal and restore the order of Collector (Appeals). There will be no order as to costs.

16. This Court by order dated 7-2-1986 while disposing of CMP No. 141 of 1985 declined to grant stay and passed the following order :

> "But in the event of the appeal being allowed, the appellants will be entitled to refund all the amount paid by them along with interest @ 12 per cent per annum from the date of repayment."

17. If the appellants have paid the duty, they will be entitled to refund with interest @ 12 per cent per annum as observed by this Court,

18. Now we come to CA No. 2307 of 1986. In this case, we are concerned with 32 articles of different kinds of connecting rod bolts (bolt rear wheel, bolt front wheel, etc.). It appears that the appellants were paying duty on all varieties of bolts, nuts and screws manufactured by them falling under Tariff Item 52. While doing so, by letter dated 8-5-1981, they sought classification of all these items under Tariff Item 68. The Assistant Collector rejected the request and reaffirmed the existing classification under Tariff Item 52. The appellants preferred an appeal to the Collector (Appeals). The Collector (Appeals) found that the articles in question should be classified under Tariff Item 68. The Revenue aggrieved by the order of the Collector (Appeals) preferred further appeal to the Custom, Excise and Gold (Control) Appellate Tribunal (hereinafter called "the Tribunal"). Before the Tribunal, the Revenue has placed a write-up on the functions of connection rod bolts. Photocopies of material from technical publications have also been placed before the Tribunal. The appellants on their part placed another write-up on the connecting rod bolts signed by its Deputy Manager (Finance) and photocopy of a note dated 5-10-1984 from the Assistant Director of Automotive Research Association of India.

19. Before us the materials in question were produced and we could appreciate the conclusion that they are nuts and bolts as commonly understood though they differ in shape and are manufactured to

order. Though the learned counsel for the appellants attempted to take us through various decisions to convince us that the articles in question will not fall under Item 52, we are not convinced to accept that the materials placed before us cannot be called as nuts and bolts. In paras 32 and 33, the Tribunal has observed as follows :

> "Material regarding the goods now under consideration has been given in the 'write-up' filed by the Department. We are reproducing below the first two paragraphs of the write-up :
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> 'Connecting rod is used to connect the crank shaft through its big end and the piston assembly through the gudgeon pin at the small end. The big end of the connecting rod is cylindrical and is split diametrically into two at the big end, on half being an integral part of major portion of the connecting rod and the other half just like a half cylinder with flanges and holes on it. The very purpose of having the big end split into two pieces is to facilitate easy assembly. Under assembled condition, the crank pin will pass through the big end hole of the connecting rod. The two halves are fastened together with the connecting rod bolts and its nuts.
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> The very purpose of the connecting rod bolt and the nut is only to fasten together the two halves of connecting rod big end and such connecting rod bolts are rightly classifiable as bolts under Tariff Item 52. No other function other than fastening can be attributed to for "connecting rod bolts".'

33. All the 32 items are referred to by both sides as 'connecting rod bolts'. Even the respondents have not said that the item 'bolts' is totally inapplicable to the goods. What they have argued is that a more appropriate term is 'motor vehicle parts'."

20. The Tribunal further observed on common parlance test as follows :

> "The discussion above primarily has reference to connecting rod bolts designed for use in motor vehicles, since that is the basis on which the entire case has proceeded. We have examined the two representative samples of 'connecting rod bolts' shown to us at the hearing. Part No. 210 90 6750, which is stated to be for supply to Sundaram Clayton Ltd., less in the conventional shape of a bolt, though we have no reason to doubt that it was made to order. Part No. 210 90 820, which is described as for supply to Kirloskar Oil Engines Ltd., Pune, seems to be specifically made with reference to its fitment in a particular machine. However, apart from our conclusion that this by itself would not take it outside the scope of Tariff Item 52, it will be seen that if it is for use in a stationary diesel engine, the arguments with reference to a connecting rod bolt being termed a motor vehicle part would become inapplicable to this article. In regard to the rear wheel bolts, the basic arguments advanced by the respondents would have no application and prima facie these would appear to be covered by the Tribunal's decisions on hum bolts. While we have taken note of these distinctions, our decision in the present appeal is with reference to arguments based on connecting rod bolts for motor vehicles."

21. In fairness to the Tribunal (incidentally the same combination) we must point out that we found fault with the Tribunal for not following the well-settled principle of interpretation in the first case (CA No. 2800 of 1984) but in the present case, the Tribunal has taken due note of the test.

22. In the light of the findings given by the Tribunal on the basis of the evidence produced both by the Revenue and by the appellants, we do not think there is any case to interfere with these findings. The appeal is therefore, dismissed. There will be no order as to costs.