SUPREME COURT OF INDIA

Motor Industries Co. Ltd.

Vs.

Commissioner of Central Excise, Aurangabad.

C.A.No.4391-4392 of 2000

(Ashok Bhan and S.H. Kapadia JJ.)

20.01.2006

JUDGMENT

KAPADIA, J.

The short question which arises for determination in these civil appeals filed by the assessee under section 35-L(b) of the Central Excise Act, 1944 (hereinafter referred to as "the Act") is whether assembly of nozzles and nozzle holders (intermediate products) brings into existence a new product called an "injector" and if so, whether the department was right in classifying the said injector under sub-heading 8409.00.

Appellant is engaged in the manufacture of nozzles, nozzles holder and injectors. Vide show- cause notice dated 3.9.1986, the department called upon the appellant to show cause as to why duty @ 20% ad valorem on the value of nozzles and nozzle holders should not be recovered in respect of injectors on the ground that the appellant had produced nozzles and nozzle holders falling under tariff item 8409.00 which were captively consumed for the manufacture of injectors falling under 8409.00 for which no declaration was made by the appellant in their classification list. At this stage, we may point out that the matter has a chequered history, it has been remanded several times and for the reasons mentioned hereinafter, it is not necessary to set out the entire history of the prior litigation. Suffice it to state that in reply to the show-cause notices, the appellant submitted that fitting of nozzles into nozzle holders did not amount to manufacture; that, even after such fitment, the end-result remained "nozzles and nozzle holders"; that, this entire controversy stood settled by the earlier judgment of Customs, Excise & Gold (Control) Appellant Tribunal (for short "the tribunal") in the case between the same parties, namely, Collector of Central Excise v. Motor Industries Co. Limited reported in 1989 (43) ELT 290; that, nozzle and nozzle holder had no independent application as such; that, they have to be used in the IC engine in an assembled state to create combustion in the combustion chamber of IC engines. According to the appellant, an injector was a fitment of nozzles into nozzle holders and that on coupling, no new product came into existence. In reply, the appellant further stated that non-vehicular injectors were exempted from payment of duty. In this connection, it was submitted that non-vehicular injectors constituted parts of diesel engine used by agriculturists and farmers and, therefore, the Government decided to grant exemption to such non-vehicular injectors. At this stage, it may be noted that nozzles and nozzle holders stood excluded from exemption notification no.217/85 dated 8.10.1985. However, according to the appellant, by Amendment Notification No.79/86 dated 10.2.1986, non-vehicular injectors were also given the benefit of exemption, which has not been appreciated by the department (See

Written Submissions filed by the assessee before the A.C., on running page no.145 of the paperbook of original record]. Similarly, according to the appellant, exemption was also given by the Government to vehicular nozzles and nozzle holders used in a factory of production vide notification no.75/86 dated 10.8.1986 (See Written Submissions filed by the assessee before the A.C., on running page no.142 of the paperbook of original record].

By the impugned judgment, the tribunal held that the assessee was not entitled to exemption under the above notification no.217/85 as "nozzles and nozzle holders" were specifically excluded from the purview of the said notification; that, the issue in the case of Motor Industries Co. Limited (supra) was only whether nozzles fitted with the nozzle holders (injectors) were assessable under item 68 of the old Tariff though nozzles and nozzle holders were duty paid under item 34A, hence that judgment had no application to the controversy in hand.

This matter needs to be remanded to the adjudicating authority for the following reasons. Firstly, in this case, the case of the department in the show-cause notice was that nozzles and nozzle holders were intermediate products used in the coupling or assembly of injectors (final product); and that, on completion of the process of coupling a new independent product emerged, namely, an injector. How is an injector constructed and what are its components has not been decided by any of the authorities below including the tribunal. Secondly, the decision of the tribunal in Motor Industries Co. Limited (supra) has no application. In that case, the question as to what is an injector was not in issue. It was matter of classification under the old Tariff under which item 34A dealt with "parts of motor vehicle" and which parts were specifically described to include "nozzle and nozzle holders" whereas the residuary item was item 68 and the question was - whether fitment of nozzle into holder would attract item 68. In the said case, it was held that even on fitment, the product would remain "nozzle and nozzle holder" under item 34A. In the present case, it has been alleged by the department that nozzles and nozzle holders were components of an injector; that, on coupling, which process constituted manufacture, an independent product, namely, an injector emerged. This point was not there in the earlier case, hence, Motor Industries Co. Limited (supra) has no application to the present case. Further, the present case arises under the 1985 Tariff Act. Chapter 84 falls in section XVI. Section note 2, with the headings 84.07, 84.08 and 84.09 are required to be considered. These provisions were not there in the case of Motor Industries Co. Limited (supra). Thirdly, in this case, the burden was on the department to lead evidence on manufacture and marketability. It is for the department to prove that nozzles and nozzle holders were intermediate products which on coupling became an injector, which was a saleable commodity in the market. Earlier this exercise was not done because the department had erred in holding that the issue was covered by Motor Industries Co. Limited (supra). Lastly, we may point out that the appellant has claimed exemption under the above notification. The burden is on them to prove that they were entitled to exemption. In this connection, we may point out that the question of exemption will arise only after the first question on coupling or assembly is decided. Here also, we may point out that exemption notifications as amended after 1985 Tariff Act has to be seen. In this case, the question of manufacture, classification and exemption are inter-connected. The application of the above assembly to vehicular and non-vehicular user have to be examined in the light of the 1985 Tariff Act. Assistance of HSN in that regard may also be taken.

For the above reasons, we set aside the impugned judgment of the tribunal dated 20.4.2000 and remit the matter to the Adjudicating Authority for de novo adjudication of the show-cause notices. Accordingly, the above civil appeals filed by the assessee stand allowed, with no order as to costs.