M/S. Grasim Industries Limited vs Collector Of Customs, Bombay on 4 April, 2002

Equivalent citations: AIR 2002 SUPREME COURT 1706, 2002 (4) SCC 297, 2002 AIR SCW 1646, 2002 (3) SLT 60, 2002 (3) SCALE 349, (2002) 3 JT 551 (SC), 2002 (5) SRJ 187, (2002) 141 ELT 593, (2002) 128 STC 349, (2002) 3 SUPREME 155, (2002) 3 SCALE 349

Author: Arijit Pasayat

Bench: Chief Justice, N. Santosh Hegde, Arijit Pasayat

CASE NO.:
Appeal (civil) 1951 of 1998

PETITIONER:
M/S. GRASIM INDUSTRIES LIMITED

Vs.

RESPONDENT:
COLLECTOR OF CUSTOMS, BOMBAY

DATE OF JUDGMENT: 04/04/2002

BENCH:
CJI, N. Santosh Hegde & Arijit Pasayat

JUDGMENT:

ARIJIT PASAYAT, J.

In this appeal under Section 130-E of the Customs Act, 1962 (in short the 'Act'), the only question that falls for adjudication is whether Karbate Tubes made of artificial graphite impregnated with Phenolic resin which are parts of Heat exchangers are classifiable under Tariff Item: sub-heading 6815.10 in First Schedule of the Customs Tariff Act, 1975 (in short 'Tariff Act') as held by the Revenue, or under sub-heading 8419.50 as claimed by the assessee- importer.

Factual scenario needs to be noted in brief. Orders were placed by the assessee on a foreign manufacturer for supply of 14700 Karbate Tubes which were supplied during April and July, 1992. An order was passed by the Assistant Collector of Customs (Appraising Group III) classifying the

goods under Chapter heading 68.15 and sub-headings 6815.10, whereby the demand raised by the Appraiser was confirmed. Appeal filed before the Collector (Appeals) did not bring any relief to the assessee. Matter was carried in further appeal before the Customs, Excise and Gold Control Appellate Tribunal, New Delhi (in short 'Tribunal'). As there was difference in view between two members of the Tribunal, the matter was referred to a larger Bench which by the impugned order dated 24.11.1997 held that the goods were rightly classified under Chapter 68 and not Chapter 84. The main ground which appears to have been pressed before the Tribunal by the assessee was that the Karbate Tubes which are made of artificial graphite cannot be classified under tariff heading 68.15, as according to it, same applies only to natural graphite. The Tribunal did not find any substance in this plea. Reference was made to the Harmonized System Nomenclature (in short 'HSN') and it observed that Karbate Tubes made of artificial graphite being non-electric articles made of graphite fall under Chapter sub-heading 6815.10. It was further held that though this is a part of machinery which may otherwise attract sub-heading 8419.50, but the same is not applicable in view of the exclusion in Note 1(a) of Chapter 84.

In support of the appeal, learned counsel for the assessee- appellant submitted that the tubes in question are classifiable under Chapter 84 as parts of Heat exchangers, are not excluded by Note 1(a) of Chapter 84, and are to be classified under Entry 84.19. With reference to the Note 1(a) of Chapter 84, it is submitted that by application of the ejusdem generis principles, only such articles which are similar to millstones or grindstones are excluded. In reply, learned Attorney General submitted that the language of the provision in question is clear, and if the interpretation sought to be put by the assessee is accepted, it would mean a complete transformation of the provision by addition/deletion of certain words, which is not permissible.

In order to appreciate rival submissions, it would be proper to take note of the entries on which the assessee and the Revenue have placed reliance. In Chapter 68 Section XIII (Articles of stone, plaster, cement, asbestos, mica, or similar materials: ceramic products; glass and glassware), heading No. 68.15 reads as under:

> Heading No.68.15- "Articles of stone or of other mineral substances (including articles of peat), not elsewhere specified or included"
>
> Sub-heading No.6815.10- "Non-electrical articles of graphite or other carbon" 65% In Note 1 of Chapter 84 it is provided as follows: "1. This Chapter does not cover:
>
> (a) Millstones, grindstones or other articles of Chapter 68;
>
> (b) Appliances or machinery (for example, pumps) or parts thereof, of ceramic material (Chapter 69);

©Laboratory glassware (heading No. 70.17);

machinery appliances or other articles for technical uses or parts thereof, of glass (heading No. 70.19) or 70.20);

(d) Articles of heading No. 73.21 or 73.22 or similar articles of other base metals (Chapter 74 to 76 or 78 to 81);

(e) Electro-mechanical tools for working in the hand, of heading No.85.08 or electro-mechanical domestic appliances of heading No. 85.09; or

(f) Hand-operated mechanical floor sweepers, not motorized (heading No. 96.03)."

Chapter 84 appears in Section XVI and under the heading "Nuclear reactors, boilers, machinery and mechanical appliances, parts thereof" the aforesaid exclusions are provided in Notes 1(a) to (f).

Assessee's stand was that if at all the Note 1(a) has application, that will be restricted to 68.04, which specifically refers to millstones, grindstones, grinding wheels and the like without frameworks and cannot take within its ambit all the articles which are covered by Chapter 68. As noted above, it was submitted that the expression 'other articles of Chapter 68' has to take colour from "millstones, grindstones". With reference to a decision of this Court in Collector of Customs, Bombay vs. Grasim Industries Ltd. (2000 (5) SCC 177), it was submitted that the issue is settled beyond doubt. Strong reliance was placed on para 12 of the judgment which reads as follows:

> "In view of the categorical finding, there can be no hesitation in holding that the goods in question fall within Heading 84.17(1) of CTA unless it is shown they being millstones, grindstones and other articles falling within Chapter 68 have to be excluded from Heading 84.17(1) of CTA in view of Note 1(a) of Chapter 84. Obviously the articles in question are not millstones, grindstones or the like. We have carefully gone through various sub- headings of Chapter 68 of CTA and we are of the view that the contention that the goods in question fall within Chapter 68 has no substance."

(Underlined for emphasis) The plea of the appellant is clearly untenable. The issue which was under consideration in the said case was entirely different and the sentence underlined cannot be read out of context to draw an inference that Note 1(a) related to articles which are millstones, grindstones or the like. It is to be noted that the only plea which was raised before the Tribunal related to artificial and natural graphite. The points now canvassed were not urged before the Tribunal; but since they involve question of law we have permitted the parties to address us on the various aspects related to the core question.

It is significant to note that in different sub-headings the words 'similar' and 'other' have been used. It appears that wherever the expression 'similar' was intended to be used, it has been so done. Reference may be made in this context to headings and sub-headings like 6802.10, 6806.10 and 68.09 where the expression used is 'similar articles'. In some other headings and sub-headings, the expression 'and the like' have also been used, for example 6804.10 and 68.11. It cannot be said that different expressions like 'similar' and 'other' or 'and the like' have been used without any basis. Even in the Note 1 itself in clauses 'a' and 'd', the expressions used are 'other articles' and 'similar articles' respectively. Such user as noted above cannot be said to be without basis or purpose.

No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided. As stated by the Privy Council in Crawford v. Spooner [(1846) 6 Moore PC 1] "we cannot aid the Legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there". In case of an ordinary word there should be no attempt to substitute or paraphrase of general application. Attention should be confined to what is necessary for deciding the particular case. This principle is too well settled and reference to few decisions of this Court would suffice. [See: Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests, Palghat and Anr. (AIR 1990 SC 1747), Union of India and Anr. v. Deoki Nandan Aggarwal (AIR 1992 SC 96), Institute of Chartered Accountants of India v. Price Waterhouse and Anr. (1997 (6) SCC 312) and Harbhajan Singh v. Press Council of India and Ors. (JT 2002 (3) SC 21)] It was urged by learned counsel for the assessee that the legislature could have, if it had really so intended, couched the Note 1 (a) in a different manner i.e. all 'articles of Chapter 68' instead of the present expression used. Merely because the provision could have been differently worded, does not in any way affect the meaning of the expression used as it is clear and unambiguous. In Union of India and Anr. v. Delhi High Court Bar Association and Ors. (JT 2002 (3) SC 131), following observations in Navin Chandra Mafatlal v. The Commissioner of Income Tax Bombay City [(1955) 1 SCR 829] were noted:

> ".As pointed out by Gwyer C.J. in The United Provinces v. Atiqa Begum [(1940) FCR 110] at page 134 none of the items in the Lists is to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it."

In the background of what has been urged by the assessee it has to be further seen whether the principles of ejusdem generis have application. The rule is applicable when particular words pertaining to a class, category or genus are followed by general words. In such a case the general words are construed as limited to things of the same kind as those specified. The rule reflects an attempt to reconcile incompatibility between the specific and general words in view of the other rules of interpretation that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous. The rule applies only when (1) the statute enumerates the specific words, (2) the subjects of enumeration constitute a class or category, (3) that class or category is not exhausted by the enumeration, (4) the general terms follow the enumeration and (5) there is no indication of a different legislative intent.

If the subjects of enumeration belong to a broad based genus, as also to a narrower genus there is no principle that the general words should be confined to the narrower genus. In interpreting Section 30 of the United Towns Electrical Company Act, 1902 which reads: "the company shall be liable for water rates on all lands and buildings, owned by it in the aforesaid town, but otherwise shall be exempted from taxation", the Privy Council rejected the contention that the word "taxation" should be considered ejusdem generis with "water rate". It was held that there is no room for application of the principle in the absence of any mention of a genus, since the mention of a single species for example of water rates does not constitute a genus. [See: United Towns Electric Co. Ltd. vs. A.G. for Newfoundland 1939 (1) ALL ER 423 PC]. The rule cannot be applied unless there is genus constituted or a category disclosed. If the preceding words do not constitute mere specifications of a genus but constitute description of a complete genus, the rule has no application. The rule has to be applied with care and caution. This is not an inviolable rule of law, but it is only permissible inference, in the absence of any indication to the contrary. Where the context and the object and mischief of the enactment do not require restricted meaning to be attached to words of general import it becomes the duty of the Courts to give those words their plain and ordinary meaning. Following enunciation in Craies on Statute Law (Seventh Edition) at page 181 succinctly states the principle.

> "The modern tendency of the law, it was said, [by Asquith J in Allen v. Emmerson (1944) KB 362)] is " to attenuate the application of the rule of ejusdem generis." To invoke the application of the ejusdem generis rule there must be a distinct genus category. The specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects. Where this is lacking, the rule cannot apply, (Hood-Barrs v. IRC (1946) 2 All ER 768) but the mention of a single species does not constitute a genus. (Per Lord Thankerton in United Towns Electric Co. Ltd. v. Att. General for Newfoundland (1939) 1 All ER
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> 423). "Unless you can find a category," said Farwell L.J., (in Tillmans and Co. v. S.S. Knutsford (1908) 2 KB 385) "there is no room for the application of the ejusdem generis doctrine,"

and where the words are clearly wide in their meaning they ought not to be qualified on the ground of their association with other words. For instance, where a local Act required that "theatres and other places of public entertainment" should be licensed, the question arose whether a "fun-fair"

> for which no fee was charged for admission was within the Act. It was held to be so, and that the ejusdem generis rule did not apply to confine the words "other places" to places of the same kind as theatres. So the insertion of such words as " or things of whatever description" would exclude the rule. (Attorney General v. Leicester Corporation (1910) 2 Ch. 359). In N.A.L.G.O. v. Bolton Corpn. (1943) AC 166) Lord Simon L.C. referred to a definition of "workman" as any person who has entered into a works under a contract with an employer whether the contract be by way of manual labour, clerical work "or otherwise" and said: "The use of the words 'or otherwise' does not bring into play the ejusdem generis principle: for 'manual labour' and

> 'clerical work' do not belong to a single limited genus" and Lord Wright in the same case said: "The ejusdem generis rule is often useful or convenient, but it is merely a rule of construction, not a rule of law. In the present case it is entirely inapt. It presupposes a 'genus' but here the only 'genus' is a contract with an employer".

The Note 1(a) of Chapter 84, as noted above, is clear and unambiguous. It does not speak of a class, category or genus followed by general words. The rule of ejusdem generis has, therefore, no application.

Above being the position this appeal has no merit and is dismissed.

CJI ...J. (N. SANTOSH HEGDE) ...J. (ARIJIT PASAYAT) April 4, 2002