

Elpro International Ltd. vs Joint Secretary, Govt. Of India, ... on 10 October, 1984

Equivalent citations: AIR1985SC380, 1985(5)ECC167, 1985(19)ELT3(SC), 1984(2)SCALE639, 1984SUPP(1)SCC548, AIR 1985 SUPREME COURT 380, 1985 SCC (TAX) 118, 1985 UPTC 592, 1984 SCC (SUPP) 548, (1985) 19 ELT 3, (1985) 5 ECC 167, (1985) ECR 918

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Bench: A.N.Sen, D.P. Madon

JUDGMENT

Amarendra Nath Sen, J.

IN CIVIL APPEAL NO. 1315/77

1. The correctness of the decision of the High Court to the effect that the Operation Tables manufactured by the respondent-Company does not come within Item No. 40 in the First Schedule to the Central Excise and Salt Act, 1944, and in view thereof no excise duty can be imposed on the same, has been challenged in this appeal filed by the Union of India the Collector and the Assistant Collector of Central Excise, Poona.

2. The respondent-Company filed a writ petition in the High Court challenging the validity of the levy of excise duty by the authorities concerned on the Operation Tables manufactured by the respondent Company and also X-ray Protective Screens manufactured by the respondent-Company. The authorities concerned had proceeded to hold that these items were "steel furniture" within the meaning of Item No. 40 in the First Schedule to the Central Excise and Salt Act, 1944 (hereinafter referred to as the Act), and, therefore, excise duty was leviable on these two items.

3. The material facts have been fully and correctly set out in the judgment of the High Court. It does not, therefore, become necessary for us to reproduce the same.

4. On a proper appreciation of the facts and circumstances and after carefully considering the arguments advanced by the learned Counsel for the parties and the various authorities which were cited, the High Court for reasons stated in the judgment came to the conclusion that the Operation Tables cannot be considered to be furniture and, therefore, they cannot be considered to be "steel furniture" within the meaning of Item No. 40 in the First Schedule to the Act, and, therefore no duty could be levied on the Operation Tables. The High Court has however, held that in so far as the

X-ray Protective Screens are concerned, they can be considered to be "steel furniture" within the meaning of Item No. 40 and, therefore, upheld the levy of duty on this particular item.

5. Aggrieved by the judgment of the High Court, this appeal has been filed by the Union of India, the Collector of Central Excise, Poona, and the Assistant Collector of Central Excise, Poona with special leave granted by this Court. It may be noted that the respondent-Company has not preferred any appeal against the decision of the High Court holding that X-ray Protective Screens manufactured by the respondent come within Item No. 40 in the First Schedule and as such duty has been rightly levied on the same.

6. The very same contention which were raised before the High Court have been urged before us. In our view, the reasons stated by the High Court for coming to the conclusion that Operation Tables are not furniture and, therefore, they do not come within Item No. 40 in the First Schedule are cogent and should as we entirely agree with the view taken by the High Court for the reasons recorded in its judgment. As we entirely agree with the view taken by the High Court and the reasons recorded in the judgment in support of the view, we find no merit in the appeal and the appeal is accordingly dismissed.

7. It appears that when the special leave petition was admitted by this Court, this Court in its order has recorded that it will be open to the respondent in the event of the respondent succeeding in the appeal to claim interest from the appellants on the amount of excise duty wrongly collected from the respondent from the date of payment of the same by the respondent until the date of refund. We are given to understand that the excise duty was collected in the year 1966 and the amount was ultimately refunded after the order passed by this Court in May 1977 and it may also be noted that the respondent-Company was asked to furnish Bank Guarantee for getting the necessary refund. In view of the earlier order passed by this Court while admitting the special leave petition, we consider it to be just and fair that we should fix an amount which in the facts and circumstances of this case will neither be harsh nor unjust to be paid by the Union on account of such interest together with the amount of costs. We, therefore, direct that the Union of India will pay to the respondent-Company a sum of Rs. 50,000/- so quantified on account of interest and also costs of this appeal within 3 months from date.

IN CIVIL APPEAL NO. 2643 OF 1980

8. As we have upheld the judgment of the High Court in the above appeal, in our view, this appeal has necessarily to be allowed. Accordingly, we set aside the decision passed by the authorities concerned imposing duty on Orthopaedic and Fracture Tables manufactured by the appellant-Company known as 'ORTHOPOISE-99' which form the subject matter of the proceedings before the authorities concerned as also in this appeal. We hold that these items do not come within Item No. 40 in the First Schedule to the Act, and as such no duty could be levied on these items. Amounts if collected as duty shall be refunded by the respondents to the appellant-Company, within three months from today. If the amount is not refunded within the said period, the amount will carry interest at the rate of 12 per cent per annum from today. If, however, the amount is paid within the period of three months, no interest will be payable.

9. The revision petition which is pending before the first respondent, Joint Secretary, Government of India, Ministry of Finance, New Delhi, will be treated as disposed of, in view of this order passed by us in this appeal.

10. There will be no order as to costs.