M/S. Msco. Pvt. Ltd vs Union Of India & Ors on 31 October, 1984

Equivalent citations: 1985 AIR 76, 1985 SCR (1)1146, AIR 1985 SUPREME COURT 76, 1985 (1) SCC 51, (1985) 4 ECC 247, (1985) ECR 110, (1984) 49 FACLR 399, (1985) IJR 70 (SC), 1984 UJ(SC) 1084, 1985 SCC(TAX) 19, (1985) 1 SCR 1146 (SC), (1985) 1 COMLJ 184, (1985) IJR 73 (SC), (1985) 1 SCWR 4, (1985) 1 CURCC 260, (1985) 19 ELT 15, 1985 UJ(SC) 341

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, R.B. Misra

PETITIONER:
M/S. MSCO. PVT. LTD.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT31/10/1984

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
MISRA, R.B. (J)

CITATION:
1985 AIR 76 1985 SCR (1)1146
1985 SCC (1) 51 1984 SCALE (2)676
CITATOR INFO :
RF 1989 SC2278 (9)

ACT:
The Customs Act, 1962-Words "industrial units" occurring in the Notification issued under the Act-Meaning of.
Interpretation of statutes-Word occurring in a particular statute or statutory instrument-Statute silent about definition of the Word-Whether it must be interpreted according to the subject-matter of the statute and not according to the definition of the same word given in some other statute.

HEADNOTE:

The appellant imported some stainless steel plates at concessional rate of import duty under a notification which provided : (i) that the importer should import the goods for the manufacture of all or any of the articles specified in that notification; (ii) that the articles so manufactured had to be sold to industrial units for their use; (iii) that in case of violation of any one of the conditions above-mentioned, the importer was liable to pay, in respect of such quantity of goods as is not proved to have been utilised as per the notification, an amount equal to the difference between the duty leviable on such quantity but for the exemption contained in the notification and that already paid at the time of importation. The appellant submitted a certificate that the goods imported by him under the notification had been consumed and/or utilised as per the notification. But the Assistant Collector of Customs rejected the said certificate and held that the appellant was liable to pay the deficient duty in respect of the goods which had been sold to hospitals/nursing homes since they were not "industrial units" within the meaning of the Customs Act, 1962. The Collector of Customs (Appeals) confirmed the order in appeal. The revision petition of the appellant before the Customs, Excise and Gold (Control) Tribunal, also failed.

The appellant contended before this Court that the word 'industrial units' contained in the notification should be given the same meaning as is assigned to the word 'industry' in the Industrial Dispute Act, 1947.

Dismissing the appeal,

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HELD: (1) The expression 'industry' has many meanings. It means 'skill', 'ingenuity', 'dexterity', 'diligence', 'systematic work or labour', 'habitual employment in the productive arts', 'manufacturing establishment etc. While construing a word which occurs in a statute or a statutory instrument in the

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absence of any definition in that very document it must be given the same meaning which it receives in ordinary parlance or understood in the sense in which people conversant with the subject matter of the statute or statutory instrument understand it. It is hazardous to interpret a word in a accordance with its definition in another statute or statutory instrument and more so when such statute or statutory instrument is not dealing with any cognate subject.

[1149 H; 1150 A-B]

Craies on statute Law [6th Edn.] p. 164 referred to.

(2) 'Industry' in the wide sense of the term would be capable of comprising three different aspects: (1) raw materials which are an integral part of the industrial process, (2) the process of manufacture or production, and (3) the distribution of the products of the industry. An

analysis of Entry 24 and 27 of List II, Entry 52 of List I and Entry 33 of List III of the Constitution shows that 'industry' ordinarily means the process of manufacture or production. [1151 E-F]

Sh. Tika Ramji & Ors. etc. v. The State of Uttar Pradesh & Ors. [1956] S.C.R. 393 at p. 420 followed.

(3) It is true that in the Bangalore Water Supply & Sewerage Board, etc. v. R. Rajappa & Ors. [1978]3 SCR 207 this Court has held that hospitals would also come within the definition of the expression 'industry' given in the Industrial Dispute Act, 1947. But that definition cannot be used for interpreting the word 'industry' in a notification granting exemption from customs duty under the Customs Act, 1962. When the word to be construed is used in a taxing statute or a notification issued thereunder it should be understood in its commercial sense. [1151 B-C]

(4) The new definition given to the word 'industry' by Parliament in the Industrial Disputes (Amendment) Act, 1982 (46 of 1982) also specifically excludes 'hospitals or dispensaries' from the category of 'industry'. It shows that the meaning given to the expression 'industry' in the Industrial Disputes Act, 1947 cannot be depended upon while construing other statutes or statutory instruments and it should be confined to the Industrial Disputes Act, 1947 . Therefore, the word 'industry' means only the place where the process of manufacture or production of goods is carried on and it cannot in any event include 'hospitals', dispensaries or nursing homes. [1151 G-H; 1152 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3744 of From the Judgement and order dated the 25th April, 1984 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. C.D.(SB) (T) A.No. 170 of 1980 Order No. 297-B of 1984.

V.N. Deshpande and E.C. Agarwala for the Appellant. The Judgement of the Court was delivered by VENKATARAMIAH, J. This appeal is filed under section 130-E(b) of the Customs Act, 1962 against Order No. 297-B/84 dated April 25, 1984 passed by the Customs, Excise and Gold (Control) Tribunal, New Delhi.

The appellant imported two consignments weighing 0.955 m. tonne and 1.071 m. tonnes of stainless steel plates covered by Bill of Entry No. 725/111 dated August 2, 1979 and Bill of Entry No. 520/250 dated July 16, 1979 respectively. Under section 12 of the Customs Act, 1962 the appellant was liable to pay customs duty in accordance with Heading No. 73.15 of the First Schedule to the Customs Tariff Act 1975 at the standard rate of 22% ad valorem. But under the notification dated July 15, 1977 an importer was liable to pay import duty of 40% only on the said goods provided the conditions mentioned therein were satisfied. In order to avail of the said concessional rate of duty

the importer should import the goods for the manufacture of all or any of the articles specified in that notification and should bind himself by the execution of a bond in such form and for such sum as may be specified by the Assistant Collector of Customs to pay on demand in respect of such quantity of imported stainless steel plates as is not proved to the satisfaction of the Assistant Collector of Customs to have been used for such manufacture an amount equal to the difference between the duty leviable on such quantity but for the exemption contained in the notification and that already paid at the time of importation. It was further provided that the articles so manufactured had to be sold to industrial units for their use and payment for such articles was to be made by the concerned industrial unit by a crossed cheque drawn on the buyer's own bank account. Accordingly the appellant executed two bonds which were guaranteed by a branch of the Dena Bank and cleared the goods by paying customs duty at the concessional rate undertaking to comply with the requirements of the notification. Subsequently on March 10, 1980, the Assistant Collector called upon the appellant to pay full customs duty as the end-use certificates in respect of the goods in question had not been filed before the Customs Department. Then the appellant forwarded the required certificates issued by its Chartered Accountants certifying that the goods had been consumed in the manufacture of the articles specified in the notification such as pharmaceutical machineries (equipment), pressure vessels, jacketed vessels etc. and the same had been sold to fertilizers and chemical industry and petroleum and oil refinery industry. But the Assistant Collector of Customs directed the payment of Rs. 24,244/- and Rs. 26,850/- being the deficient duty payable in respect of the two consignments in terms of the bonds stating that in the course of investigation it was revealed that the appellant had sold some of the manufactured items to a local dealer and not to industrial units for their own use and that some items had been sold to hospitals/nursing homes which were not industrial units. Aggrieved by the order of the Assistant Collector the appellant filed two appeals before the Collector of Customs (Appeals), Bombay, contesting inter alia the finding that hospitals were not industrial units. The Appellate Collector rejected the appellants contention that hospitals were industrial units and hold that as far as the supplies effected by the appellant to hospitals and nursing homes were concerned the condition that the manufactured goods should be sold to industrial units had not been fulfilled. The appeals were rejected to that extent. The cases were remanded however to the Assistant Collector for fresh decision on another issue with which we are not concerned. Against the common order passed by the Collector of Customs (Appeals) in the above said two appeals the appellant filed a revision petition under section 131 of the Customs Act, 1962, as it then stood, before the Government of India. That revision petition was later on transferred to the above said Tribunal. The appellant also filed another appeal before the Tribunal directly since there were two appeals before the Appellate Collector. The principle contention urged before the Tribunal was that the Department was wrong in holding the hospitals and nursing homes were not industrial units. The Tribunal rejected that contention and dismissed the appeals. This appeal is filed against the order of the Tribunal.

When the above case came up for admission the only ground urged by the learned counsel for the appellant was that the Tribunal was not right in holding that hospitals and nursing homes were not industries and reliance was placed by him on a decision of this Court under the Industrial Disputes Act, 1947 in which it had been held that hospitals, dispensaries and nursing homes were also industries. As the appellant has relied on a decision of this Court arising under the Industrial Disputes Act, 1947 in support of its case which requires to be distinguished we are passing this order

giving our reasons although it is not usual to do so when an appeal is dismissed without notice to the respondents.

The expression 'industry' has many meanings. It means 'skill', 'ingenuity', 'dexterity', 'diligence', 'systematic work or labour', 'habitual employment in the productive arts', 'manufacturing establishment' etc., But while construing a word which occurs in a statute or a statutory instrument in the absence of any definition in that very document it must be given the same meaning which it receives in ordinary parlance or understood in the sense in which people conversant with the subject matter of the statute or statutory instrument understand it. It is hazardous to interpret a word in accordance with its definition in another statute or statutory instrument and more so when such statute or statutory instrument is not dealing with any cognate subject. Craies on Statute Law (6th Edn.) says thus and page 164:

> "In construing a word in an Act caution is necessary in adopting the meaning ascribed to the word in other Acts. "It would be a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to such an interpretation is given to it for the purposes of that Act alone." Macbeth v. Chislett [1910] A.C. 220, 223."

When the word to be construed is used in a taxing statute or a notification issued thereunder it should be understood in its commercial sense. It is well known that under the law levying customs duties sometimes exemptions are given from the levy of the whole or a part of customs duty when the goods in question are sold either in the form in which they are received or in a manufactured or semi manufactured state to a manufacturing establishment for purposes of using them in manufacturing finished or semi- finished goods in order to lessen the cost of machinery or equipment employed in or raw materials used by such manufacturing establishment. The object of granting such exemption is to give encouragement to factories or establishments which carry on manufacturing business. The appellant, however, relies upon the meaning assigned to the word 'industry' in the Industrial Disputes Act, 1947 in support of its case. The expression 'industry' is no doubt given a very wide definition in section 2 (j) of the Industrial Disputes Act, 1947. It reads thus:

> "2 (j) 'industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen."

The above definition is given in the context of the subject matter with which the Industrial Disputes Act, 1947 is concerned. The pith and substance of that act is to make provision for settlement of disputes between employers and employees in institutions, establishments, industrial or business houses or factories of various kinds. It is true that in the Bangalore Water- Supply and Sewerage Board, etc. v. R. Rajappa & Ors. this Court has hold that hospitals would also come within the definition of the expression 'industry' given in the Industrial Disputes Act, 1947 which is as wide as the legislature could have possibly made it. But that definition cannot be used for interpreting the word 'industry' in a notification granting exemption from customs duty under the Customs Act, 1962. A perusal of the provisions of the Constitutions shows that the expression 'industry' does not

ordinarily posses such wide meaning. In Article 19 (6) (ii) the word 'industry' does not include 'trade', 'business' or 'service' which are specifically referred to therein. Then we have the expression 'industry' in Entires 7 and 52 of List I, Entry 24 of List II and Entry 33 of List III of the Seventh Schedule to the Constitution. The said expression in these entries does not include trade or commerce or distribution of goods which are found else where in the said Lists. What is of significance is that in List II 'hospitals and dispensaries' are specifically referred to in Entry 6 and they cannot, therefore, possibly fall under Entry 24 thereof which refers to 'industries'. As observed by this Court in Ch. Tika Ramji & Ors. v. The State of Uttar Pradesh & Ors. 'industry' in the wide sense of the term would be capable of comprising three different aspects: (1) raw materials which are an integral part of the industrial process, (2) the process of manufacture or production, and (3) the distribution of the products of the industry. But raw materials are dealt with by Entry 27 of List II, the process of manufacture or production by Entry 24 of List II except where the industry is a controlled industry when it would fall under Entry 52 of List I and the products of the industry would fall under Entry 27 of List II except where they are products of controlled industry when they would fall under Entry 33 of List III. An analysis of these provisions shows that 'industry' ordinarily means the process of manufacture or production. We have referred to the above provisions of the Constitution only to show how that expression is understood ordinarily. It may also be relevant to mention here that the new definition given to the word 'industry' by Parliament in the Industrial Disputes (Amendment) Act, 1982 (46 of 1982) specifically excludes 'hospitals or dispensaries' from the category of 'industry'. It shows that the meaning given to the expression 'industry' in the Industrial Disputes Act, 1947 cannot be depended upon while construing other statutes or statutory instruments and it should be confined to the Industrial Disputes Act, 1947. We are of the view that in the notification under which the exemption is claimed by the petitioner, the word 'industry' means only the place where the process of manufacture or production of goods is carried on and it cannot in any event include 'hospitals, dispensaries or nursing homes'.

The decision of the Tribunal does not call for any interference.

The appeal is therefore, rejected.

M.L.A Appeal dismissed