Supreme Court of India
Nat Steel Equipment Pvt. Ltd vs Collector Of Central Excise on 19 January, 1988
Equivalent citations: 1988 AIR 631, 1988 SCR (2) 732
Author: S Mukharji
Bench: Mukharji, Sabyasachi (J)

PETITIONER:
NAT STEEL EQUIPMENT PVT. LTD.

Vs.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE

DATE OF JUDGMENT19/01/1988

BENCH:
MUKHARJI, SABYASACHI (J)
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MUKHARJI, SABYASACHI (J)
RANGNATHAN, S.

CITATION:
1988 AIR 631 1988 SCR (2) 732
1988 SCC (1) 605 JT 1988 (1) 228
1988 SCALE (1)214

ACT:
Central Excise and Salt Act, 1944: Sections lIA and 35L-Tariff item No. 33C Explanation I and item No. 68-Manufacture of items used in big hospitals hotels and industrial canteens-Domestically operated machines-Classification of-Whether electrical appliance for household purposes-'Similar description'-Interpretation of-Absence of suppression of fact in classification-Whether s. 11A applicable.

HEADNOTE:
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Words and Phrases: 'Similar description '-meaning of.

The appellant, manufacturer of Hospital and Pharmaceutical Appliances and Heavy Duty Industrial Canteen Equipment, classified certain items like cooking range, deep fat fryer, express coffee machine, bread toaster etc., numbering 14, under Tariff Item No. 68 of the Central Excise and Salt Act, 1944. The Assistant Collector held that products 2 to 14 were classifiable under Tariff Item No. 33C, in view of the Explanation thereof, and demanded differential duty for the period of 1st March, 1979 to 30th June, 1980.

The Collector, on appeal, held that these items were to be classified under Tariff item No. 68 and not under Tariff item 33C .

On appeal by the Revenue, the Central Customs Excise and Gold (Control) Appellate Tribunal, while noting that the equipment in question, some of which were electrically operated machines, were used in industrial canteens, five star hotels, big hospitals, etc. held that the intention of the Legislature was clear from the Explanation to Tariff Item No. 33C, and the items in question could not be classified under Tariff Item No. 68.

Dismissing the appeal by the manufacturer.

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HELD: The statute does not contemplate that goods classed under the words of "similar description" shall be in all respects the same. If it did, these words would be unnecessary. These were intended to embrace goods but not identical with those goods. If the items were

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similar appliances which are normally used in household, these will be taxable under Tariff Item No. 33C. [73CD]

It is not necessary, to be a domestic appliance, that it must be actually used in the home or the house. It must be of a kind that they are generally used for household purposes. [736B]

The types of items concerned in the instant case are generally used for household purposes and that is sufficiently good test for classification in the light of explanation to tariff item No. 33C. The Tribunal was. therefore, right in holding that these items could not be classified under Item 68. [736C]

Since the appellant had set out all the details and the Revenue had assessed the appellant under Tariff Item No. 68, the Tribunal was right in holding that there was no intention to evade payment of duty and in directing that the modification of the classification list could only be prospective and not retrospective. In the absence of any proof of suppression of fact, it was also right in holding that s. l 1-A of the Act would not be applicable. [736D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2860 of 1987.

From the Judgment and order dated 8.7.1987 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. 1311 of 1983 and Suppl. A. No. 1798 of 1987-BI.

Soli J. Sorabjee, S.R. Grover and K.J. John for the Appellant.

The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. This is a statutory appeal from the decision and order of the Customs Excise and Gold (Control) Appellate Tribunal (briefly referred to as 'CEGAT') under section 35L of the Central Excise and Salt Act, 1944 (hereinafter called 'the Act'). It appears that the appellant is a manufacturer of Hospital and Pharmaceutical Appliances and Heavy Duty Industrial Canteen Equipment. The following 14 items were classified by him under Tariff Item No. 68 of the said Act in his Classification List No. 106 dated 27:3.1979:-

> "(1) Storage Tank, (2) Cooking Range (Electric opera-
>
> tion and gas operated), (3) Baking oven, (4) Deep Fat Fryer, (5) Bain Mafie, (6) Sterilizing Sink, (7) Expresso Coffee Machine, (8) Steam Jacketed Vessel (Steam operated), (9) Bread Toaster, (10) Bulk Cooker & Fryer, (11) Chappatty Plate/Chappatty Puffer and Chappatty Plate/Puffer, (12) Dish Washing Machine, (13) Potato Pooler and (14) Masala Grinder. "

The Assistant Collector held the view that products 2 to 14 were classifiable under Tariff Item No. 33C in view of the Explanation thereof. After giving notice the Assistant Collector demanded differential duty amounting to Rs.1,91,622.20 for the period Ist of March, 1979 to 30th June, 1980. The Assistant Collector confirmed the demand except in respect of Item No. 8, namely, Steam Jacketed Vessel.

Being aggrieved from these orders, the appellant filed appeals before the Collector. The Collector accepted the appellant's contentions and came to the conclusion that these were to be classified under Tariff Item No. 68 and not under Tariff Item No. 33C. Tariff Item 33C at the relevant time contained the Explanation-I, which is as follows:

> "Explanation-I 'Domestic electrical appliances' means electrical appliances normally used in the household and similar appliances used in hotels, restaurants, hostels. offices, educational institutions, hospitals, train kitchens. aircraft or ship's pantries, canteens, tailoring establish ments, laundary shops and hair dressing saloons".

The revenue went up in appeal before the CEGAT. The Tribunal noted that the equipments in question were used in industrial canteens, Five Star Hotels, big hospitals etc. The nature of the items such as deep fat fryer, Expresso coffee machine, bread toaster, chap patty plate, etc. were all electrically operated machines. The Tribunal further noted that Tariff Item 33C was in respect of "domestic electrical appliances not elsewhere specified". According to the Tribunal the intention of the legislature in respect of "domestic electrical appliances" was clear from the Explanation. It is apparent that the above named items are specially designed for use in big canteens attached to industrial units, big hotels, hospitals etc. where food in bulk quantity for hundreds of people is required to be prepared and served. These required electric power exceeding 230 volts in order to have considerable capacity for preparing and serving food. Their prices ranged from Rs.7,000 to Rs.1.5 lakhs. It was submitted that these are important and relevant factors for distinguishing the said items as distinct and different from those appliances which are used normally in the household. It was submitted that these heavy duty items fall outside the purview of Tariff Item No. 33C. The

Tribunal was of the view that though considerable space is required for these items but space was not any criteria for determining this question. According to the Tribunal that these items could not be classified under Tariff Item No. 68. We are of the opinion that the Tribunal is right.

It is manifest that these equipments were electrical appliances. There was no dispute on that. It is also clear that these are normally used in household and similar appliances are used in hotels etc. The expression "similar" is a significant expression. It does not mean identical but it means corresponding to or resembling to in many respects; somewhat like; or having a general likeness. The statute does not contemplate that goods classed under the words of 'similar description' shall be in all respects the same. If it did these words would be unnecessary. These were intended to embrace goods but not identical with those goods. If the items were similar appliances which are normally used in the household, these will be taxable under Tariff Item No. 33C.

It appears that the Gujarat High Court in the case of Viswa & Co. v. The State of Gujarat, (17 Sales Tax Cases

581) had occasion to consider whether electric fans are domestic electrical appliances for the purpose of Bombay Sales Tax Act, 1953. Bhagwati, J. as the learned Chief Justice then was, speaking for the Gujarat High Court observed as follows:

> "A domestic electrical appliance, in our opinion, would be an electrical appliance of a kind generally used for domestic purposes. It may also be used at places other than the home or the house, but that would not destroy the character of a domestic electrical appliance which attaches to it by reason of its being a kind of an electrical appliance generally used for the household. There are several electrical appliances which are generally used in the household, such as electric irons, electrical sewing machines and electrical cooking-ranges which are also used in other establishments. But these electrical appliances do not therefore cease to be domestic electrical appliances. It is of course not necessary that an electrical appliance, in order to satisfy the description of a domestic electrical appliance, must be actually used in the home or the house. What is necessary is that it must be of a kind which is generally used for household purposes and if that test is applied, there is no doubt that electric fans are domestic electrical appliances and the Tribunal was therefore right in holding that they fall within entry 52 of Schedule B."

We agree that it is not necessary to be a domestic electrical appliance that it must be actually used in the home or the house. It must be of a kind which is generally used for household purposes. It appears to us that the types of items concerned in this appeal are generally used for household purposes and that is sufficiently good test for classification in the light of the explanation to Tariff Item No. 33C.

In view of the fact that the Tribunal recognised that the appellant had set out all the details in the classification list and the revenue had assessed him under Tariff Item 68, the Tribunal came to the conclusion that there was no intention to evade payment of duty. Therefore, the Tribunal directed

that the modification of the classification list could only be prospective and not retrospective. The Tribunal was just and right in so doing. The Tribunal was also right in holding that in the absence of any proof of suppression of fact, section 11-A of the said Act would not be applicable. The show cause notice raising a demand of duty was issued on 8th of September, 1980 and the Tribunal sustained the demand for the period 9th March, 1980 to 30th June, 1980 in respect of items 3 to 7 and 9 to 14.

We are of the opinion that the Tribunal was right and the decision of the Tribunal therefore, does not call for interference.

In that view of the matter the appeal is rejected.

There will be no order as to costs
N.P.V. Appeal dismissed.