Supreme Court of India
Jaishri Engineering Co. (P) Ltd vs Collector Of Central Excise, ... on 2 March, 1989
Equivalent citations: 1989 AIR 1218, 1989 SCR (1) 870
Author: S Mukharji
Bench: Mukharji, Sabyasachi (J)

PETITIONER:
JAISHRI ENGINEERING CO. (P) LTD.

Vs.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE, BOMBAY

DATE OF JUDGMENT02/03/1989

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

CITATION:
1989 AIR 1218 1989 SCR (1) 870
1989 SCC (2) 439 JT 1989 (1) 500
1989 SCALE (1)602

ACT:
Central Excises and Salt Act, 1944.--Section 11-A proviso 35L and First Schedule Items 52 and 68--Whether goods in question were nuts being mere fasteners or end fittings and integral parts of diesel engine pipes--Classification of goods manufactured-functional approach to identity of goods--Whether there was suppression of facts by the assessee--A question of fact----Tribunal free to fix quantum of penalty.

HEADNOTE:
The appellant-company applied for a requisite central excise licence for manufacture of goods falling under Tariff Item 68 and for the purpose of such goods L-4 licence was also furnished and also the requisite ground plans of the factory in which the various goods were manufactured. The excise authorities granted L-4 licence. The appellant claimed benefit of exemption of Notification No. 89/79-CE dated March 1, 1979. The classification list submitted by the appellant was approved by the Assistant Collector by his letter dated May 25, 1979. For the period April 1, 1979 to June 30, 1979 the appellant filed his RT-12 for assessment which was also finally assessed without any protest or

objection. As the appellant claimed that his goods were wholly exempted by virtue of notification No. 89/79-CE dated March 1, 1979, the appellant wrote to the Superintendent asking for dispensation from filing RT-12 every month. The Superintendent informed the appellant that it need not file RT-12, but should inform the excise authorities monthly by means of a simple letter the total clearance effected in the month in question.

Thereafter, the appellant submitted classification list in 1980, 1981 and 1982 and claimed benefit of exemption under notification No. 105/80-CE dated June 19, 1980. The Assistant Collector approved the classification list.

The Central Excise Officer attached to the preventive branch visited the factory in July 1982 and examined the products manufactured by the appellant. In January 1983, a show-cause notice was issued to the appellant asking it to show-cause as why excise duty should not be demanded under Tariff Item 52 in respect of the piece of nuts manu-
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factured and removed by the appellant during the period April 1, 1981 to July 19, 1982 without payment of appropriate excise duty thereon, and also to show-cause why penalty should not be imposed for failure to obtain the requisite L-4 licence under Tariff Item 52 and to show cause why the material seized on August 26, 1982 should not be confiscated.

The appellant showed cause and drew the attention of the authorities to the fact that the goods in question were not nuts but end products or connectors for lubricating purposes and as such were integral parts of Diesel Engine Pipes failing under Tariff item 68.

The Collector of Central Excise passed orders on July 16, 1984 holding that fittings were nuts classifiable under Tariff Item 52, and that appropriate duty on the clearance effected by the appellant during the period April 1, 1981 to July 19, 1982 should be paid and the seized goods were liable to confiscation but in lieu thereof a redemption fine of Rs.4,000 could be paid. The Collector also imposed a penalty of Rs. 1 lakh.

The appellant went up in appeal before the Tribunal, which partly allowed the appeal and partly upheld the order of the Collector. With regard to classification of the different fittings was concerned, it was held that the classification should have been as nuts under Tariff Item 52 of the Central Excise Tariff. It further held that the appellant was guilty of suppression and therefore rejected the submission of the appellant that the show-cause notice was barred by time. It, however, reduced the amount of Penalty imposed by the Collector from Rs. 1 lakh to Rs.50,000.

The appellant appealed to this Court by special leave. In the appeal to this Court, on the question whether the goods manufactured by the appellant were end products or

connectors for lubricating purposes and as such were integral parts of the Diesel Engine Pipes failing under Tariff Item 68 as claimed by the appellant or nuts classifiable under Tariff Item 52.

Dismissing the appeal,

HELD: 1. The Tribunal was right in classifying the goods under Tariff Item 52 of the Central Excise Tariff and in upholding the demand of the duty for a period beyond six months as contemplated by s. 11-A of the Act. The Tribunal duly gave benefit of the exemption notification in respect of the goods which had been exported. [878F]

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2(a) The Tribunal was right in upholding the demand of duty for a period beyond six months as contemplated by section 11-A of the Act. [878F]

2(b) Whether there was any fraud, collusion, wilful mis-statement, or suppression of fact, for the department to be justified to claim duty beyond a period of six months under the proviso to section 11-A of the Act is a question of fact. [878B]

2(c) The appellant. was both buying and selling these nuts and as such there was no conceivable reason why these nuts were described as end-fittings in the declaration to the Department. In the declaration it was so described. [878C-D]

2(d) The fact that the officers of the Department visited the factory of the appellant and they should have been aware of the production of the goods in question, was no reason for the appellant not to truly and properly describe these goods. [878D-E]

2(e) Not only did the appellant, as found by the Tribunal, not described these goods properly, but also gave a misleading description. [878E]

3. The Tribunal on appraisement of all the materials, held that these were nuts manufactured by the appellant. Such finding cannot be said to be wrong or perverse. It was arrived at after giving opportunity to both the parties and considering all relevant materials. There is no cogent ground to sustain any challenge to the findings of the Tribunal. The Tribunal has considered all the relevant evidence, and not ignored any relevant piece of evidence. It had applied the correct principle of law applicable to the determination of the question. It has also applied the test of commercial identity of the goods and examined the matter from the angle of the conduct of the appellant. These findings of the Tribunal cannot be assailed in appeal under section 35L of the Act. [875E; 877B-C]

4. The Tribunal having come to the conclusion that there was deliberate suppression or wrong statement, it follows automatically that the Tribunal was justified in upholding the imposition of penalty. The quantum of penalty was a matter which the Tribunal was free to fix as it thought fit, as the justice of the case demanded. Nothing has been shown

that the conclusion was bad. [878G-H; 879A]
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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 223 of 1989.

From the Judgment and Order dated 31.10.88 of the Cus- toms Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. E. 12068/84 BI (Order No. 432/88-BI). Soli J. Sorabjee, A.N. Haksar, Ravinder Narain, P.K. Ram and D .N. Misra for the Appellant.

The judgment of the Court was delivered by SABYASACHI MUKHARJI, J. This is an appeal under section 35-L of the Central Excises & Salt Act, 1944 (hereinafter referred to as 'the Act'). against the order dated 31.10.1988 passed by the Customs, ExciSe & Gold (Control) Appellate Tribunal (hereinafter referred to as 'the Tribu- nal').

The issue involved in this appeal mainly relates to the classification of the goods, namely, whether the products of the appellant in this case were end-fittings or nuts? The question was whether the goods were classifiable under Tariff Item 52 or Tariff Item 68 of the erstwhile First Schedule to the Act.

The appellant applied for requisite central excise licence for manufacture of goods falling under Tariff Item 68 and for the purpose of such goods L-4 licence was also furnished, and also the requisite ground plans of the facto- ry showing the requisite sanction of the factory in which the various goods were manufactured. The excise authorities granted L-4 licence. The appellant contends that the same was done after verifying the ground plans. Necessary classi- fication list was supplied on 22nd March, 1979 for approval by the excise authorities and the appellant claimed benefit of exemption of notification No. 89/79-Central Excise dated 1.3.79. The said classification list submitted by the appel- lant was approved by the Assistant Collector of Central Excise by his letter dated 25th May, 1979. For the period from 1.4.79 to 30.6.79, the appellant filed his RT-12 for the assessment, which was also finally assessed without any protest or objection. Inasmuch as, the appellant claimed that its goods were wholly exempted by virtue of the notifi- cation No. 89/79CE dated 1.3.79, the appellant wrote to the Superintendent of Central Excise asking for dispensation from filing RT-12 every month. The Superintendent by his order informed the appellant that it need not file RT-12, but should inform the Excise Department monthly by means of a simple letter the total clearance effected in the month in question. Thereafter, the appellant submitted classification lists in 1980, 1981 and 1982 in respect of the said goods and claimed the benefit of the exemption under notification No. 105/80- Central Excise, dated 19.6.80, which was a subsequent noti- fication. The Assistant Collector of Central Excise duly approved the said classification lists. It is stated that the Central Excise Officers attached to the Preventive Branch visited on or around 13.7.82, the factory of the appellant and examined the products manufactured by the appellant. The excise authorities once again, it is stated, visited the factory of the appellant on 20th July, 1982. However, on 17th .January, 1983, a show-cause notice was issued to the appellant asking it to show-cause as to

why excise duty should not be demanded under Tariff Item 52 in respect of 14,88,838 pieces of nuts manufactured and removed by the appellant during the period 1st April, 1981 to 19th July, 1982 without payment of appropriate excise duty there- on. It was further stated in the show-cause notice to show cause why penalty should not be imposed on the appellant for failing to obtain the requisite L-4 licence under Tariff Item 52 in respect of the said goods and for failing to file price lists and classification lists in respect thereof and further to show-cause why the material seized on 26th August, 1982 should not be confiscated. The appellant showed cause, and drew attention to the Indian Standard Institution publication for specification of High Pressure Connection meant for lubricating arrangement of oil in Fuel Injection Equipment for Diesel Engines which according to the appellant, showed that the goods in question were not nuts but end products or connectors for lubricating purposes and as such were integral parts of the Diesel Engine Pipes falling under Tariff Item 68.

On 16th July, 1984, the Collector of Central Excise passed orders holding that fittings were nuts classifiable under Tariff Item 52 and that appropriate duty on the clear- ances effected by the appellant during the period 1st April, 1981 to 19th July, 1982 should be paid, and that the seized goods were liable to confiscation but in lieu thereof a redemption fine of Rs.4,000 could be paid within three months, the exports effected indirectly by the appellant were not entitled to benefit of Notification No. 89/79-CE and, therefore, the differential duty in respect of those clearances was payable under Tariff Item 68 and that the show cause notice was not barred by time. The Collector, accordingly, imposed a penalty of Rs. 1 lac. Aggrieved thereby, the appellant went up in appeal before the Tribunal. The Tribunal partly allowed the appeal of the appellant and partly upheld the order of the Collector. So far as the question of classification of the different fittings was concerned, the Tribunal held that the classification should have been as nuts under Tariff item 52 of the Central Excise Tariff. The Tribunal also held that the appellant was guilty of suppression and therefore rejected the submission of the appellant that the show cause notice was barred by time. The contention of the appellant in respect of the benefit of exemption being available to the extent of export effected indirectly on the basis of the earlier decision of the Tribunal, was accepted by the Tribunal and the order of the Collector was modified to that extent. The Tribunal also reduced the amount of penalty imposed by the Collector from Rs. 1 lac to Rs.50,000.

Aggrieved thereby, the appellant is in appeal before this Court. The first contention that was agitated before us and which was decided against the appellant in the order of Tribunal is, whether the goods in question involved in this appeal were classifiable under Tariff Item 52 of the Central Excise Tariff or whether these goods were classifiable under Tariff Item 68. The Tribunal noted that these goods were described as 'nuts' by the Consultant on behalf of the appellant in the arguments submitted before the Tribunal. The appellants were purchasing nuts, both threaded and unthreaded, and the latter being threaded, this was to be taken for captive consumption. Therefore, it was contended on behalf of the appellant that the function of such nuts was not merely fastening but also facilitating the flow of oil under high pressure without leakage. It was emphasised that these nuts were leak proof. The Tribunal on appraise- ment of all the materials, held that these were nuts manu- factured by the appellant. It was evident from the Tribu- nal's judgment that the appellant was itself purchasing, both threaded and unthreaded nuts as such and the unthreaded nuts were threaded by the appellant. Apart from captive consumption, some of these nuts were also sold as nuts to outside parties. These facts were found by the Tribunal and recorded in its order. The Tribunal in those

circumstances was of the view that it was difficult to accept the appel- lant's contention. The impugned goods were commercially known and bought and sold as nuts. It is true that specification of the Indian Standard Institution was drawn atten- tion to. But there was evidence, as noted by the Tribunal, about the commercial indentify of these goods. If these goods not being defined as such and are commercially known as nuts, as found by the Tribunal then, in our opinion, such finding cannot be said to be wrong or perverse. Such finding was arrived at after giving opportunity to both the parties and considering all relevant materials. Such finding cannot be assailed in this appeal.

The functional approach to the identify of the goods as canvassed by the appellant was also duly considered by the Tribunal. It was contended that the function of the nuts was not only to fasten but also to enable the flow of oil under high pressure without leakage. But the Tribunal noted that the flow of oil is possible only after nuts are fastened. To that extent, according to the Tribunal, it can be stated that nuts permit the flow of oil without leakage. The ques- tion is, however, not as to what is the process facilitated as a result of the nuts, but the question which the Tribunal itself posed is--whether the nuts are fasteners or do they have any other 'independent function? The Tribunal found that it had not been shown before them that they had any such independent function. To say that these nuts are leak- proof, was only to reiterate the fact of their essential character and quality as fasteners and not to substantiate any argument as regards their independent function. In that view of the matter, the Tribunal even taking the functional approach to the identity of the goods, came to the conclu- sion that the goods in question were properly classifiable as nuts. That conclusion of the Tribunal cannot be assailed in appeal in view of the evidence on record as noted before. Certain decisions were referred to before the Tribunal-by the appellant in support of its contention that in certain cases goods of these types had not been considered to be nuts. These goods, as the Tribunal noted, were in the nature of bolts, nuts and rods of special type manufactured by a particular party. Therefore, these were not classifiable as merely bolts and nuts under Tariff Item 52 of the Central Excise Tariff, but as integral parts of the machine for which they were specifically designed with a distinct and specific function in the operation of the motor-cycle of which these were components parts. It was held in those cases that the components manufactured solely on the orders of the buyers, as per their drawings and specifications, were components of mining and project machinery and, there- fore, not classifiable under Tariff Item 52-CET, But the facts involved in these items of goods in the instant case, dealt with by the appellant, are different. These goods were not manufactured according to any special specifications as integral parts of machinery. Some of these nuts required were also purchased from market' while those being manufac- tured were also sold to outside buyers as nuts. Attention of the Tribunal was also drawn to the case of M/s. Precision Fasteners Ltd. v. Collector of Central Ex- cise, Bombay-II. In that case, however, the Tribunal did not take any final view on the product. In view of the type of goods involved in that case, the Tribunal had remanded the matter for re-adjudication. In that view of the matter, the Tribunal was of the view that the commercial identify of the goods in the instant case, was different from the goods involved in the Precision Fasteners Ltd.'s case (supra). In the light of these submissions, the Tribu- nal came to the conclusion that the goods were classifiable under Tariff Item 52 of the Central Excise Tariff. It was this finding which is assailed before us in appeal. We find, however, as noted hereinbefore, no cogent ground to sustain any challenge to the aforesaid finding of the Tribunal. The Tribunal has considered all the relevant evidence. The Tribunal has not

ignored any relevant piece of evidence. It had applied the correct principle of law ap- plicable to the determination of this question. It had also applied the test of commercial identity of the goods and examined the matter from the angle of the conduct of the appellant. In that view of the matter, we are of the opinion that these findings of the Tribunal cannot be assailed. The next question that has to be determined is whether the claim for duty is only to be confined to the period of six months because it was contended, in view of the facts and the circumstances narrated hereinbefore, that there was no suppression of any fact. It may be relevant in this connection to refer to Section 11-A of the Act, which pro- vides as follows:

> "When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, a Central Excise Officer may, within six months from the rele- vant date, serve notice on the person charge- able with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has errone- ously been made, requiring him to show cause why he should not pay the amount speci- fied in the notice:
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> Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if for the words "Central Excise Officer", the words "Collector of Central Excise", and for the words "six months", the words "five years" were substituted.
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> Explanation:--Where the service of the notice is stayed by an order of a Court, the period of such stay shall be excluded in computing the aforesaid period of six months or five years, as the case may be."

Therefore, we have to find out whether there was any fraud, collusion, wilful misstatement or suppression of facts for the Department to be justified to claim duty beyond a period of six months. This is a question of fact. It was found by the Tribunal that it was not possible for the appellant to contend that the appellant had made a correct statement. The Tribunal noted that the appellant could hardly contend that it discharged the onus of making correct declaration if it had withheld the description which was commonly used in respect of the goods not only by it- self, but also by those from whom it bought or to whom it sold the products. The appellant itself was both buying and selling these nuts and as such there was no conceivable reason why these nuts were described as end-fittings in the declaration to the Department. It may be noted that in the declaration it was so described. The Tribunal was of the view, and it cannot be said not without justification that these goods should have been described as nuts because the appellant itself had treated these as nuts. Therefore, from this conduct suppression is established. The fact that the Department visited the factory of the appellant and they should have been aware of the production of the goods in question, was no reason for the appellant not to truly and properly to describe these goods. As a matter of fact, not only did the appellant, as found by the Tribunal, not de- scribed these goods properly but also gave a misleading description.

In the aforesaid view of the matter, we are of the opinion that the Tribunal was right in classifying the goods under Tariff Item 52 of the Central Excise Tariff and in upholding the demand of the duty for a period beyond six months as contemplated by Section 11-A of the Act. The Tribunal duly gave benefit of the exemption notification in respect of the goods which had been exported. This part of the order is not challenged and cannot be challenged. The Tribunal, however, reduced the penalty from Rs. 1 lac to Rs.50,000. Mr. Sorabji, learned counsel for the appellant, contended that this was not right. There should not have been any penalty imposed. We are, however, unable to accept that position. Having come to the conclusion that there was deliberate suppression of wrong statement, it follows auto- matically that the Tribunal was justified in upholding the imposition of penalty. The quantum of penalty, however, was a matter which the Tribunal was free to fix as they thought fit, as the justice of the case demanded.

Nothing has been shown to us that the conclusion of the Tribunal was bad.

In that view of the matter, the order of the Tribunal is upheld. The appeal must, therefore, fail and is accordingly dismissed.

N.V.K. Appeal dis-
missed.