

CASE NO.:
Appeal (civil) 3579-81 of 1984

PETITIONER:
INDIAN TOOL MANUFACTURERS

RESPONDENT:
ASSTT. COLLECTOR OF CENTRAL EXCISE, NASIK AND ORS.

DATE OF JUDGMENT: 23/09/1994

BENCH:
B.P. JEEVAN REDDY & SUHAS C. SEN & K.S. PARIPOORNAN

JUDGMENT:
JUDGMENT

1994 SUPPL. (4) SCR 1

The Judgment of the Court was delivered by

SEN, J. : The appellants manufacture and sell what they call as 'THROW-AWAY INSERTS' (hereinafter referred to as 'the Inserts') During the period upto 17.6.77. these Inserts were classified under T.I. No. 68. In view of the amendment in T.I. No. 51A, these Inserts were classified under that Tariff Item Number from 18.6.77. Until 28.2.79, the appellants paid duty accordingly. On 1.3.79. they filed a revised classification list in which inserts were listed at Serial Nos. 1716 to 1741. Since the Department intended to make certain inquiries likely to take sometime, classification of the inserts was provisionally approved under Item Nos. 51A(iii). On 25.2.80 the Assistant Collector, Central Excise, issued a Show Cause Notice asking the appellants as to why the classification in respect of the Inserts approved earlier provisionally under T.I No. 51A(iii) should not be changed to T.I. No. 62. A similar Show Cause Notice was issued in respect of the Classification List No. 5 effective from 20.6.79 No. 6 effective from 2.7.79 No. 7 effective from 6.7.79 No. 8 effective from 12.7.79 and No. 14 effective from 28.11.79 in so far as these pertained to the 'Inserts'. Under an order dated 28.4.80/2.5.86, reclassification proposed under the Show Cause Notices was confirmed. That is to say, the 'Inserts' were classified under T.I. No. 62 as 'Tools Tips'.

Being aggrieved, the appellants filed an appeal registered as Appeal No. 1982/80 (F.No. V.2(62)1982/80). Besides this appeal, there were two other appeals, one registered as Appeal No. 2218/80 (F. No. V2(51A)2218/80, against the Order No. V- 51A(17)131/VC/80 dated 10.7.80, passed by the Assistant Collector of Central Excise, Nasik, by which he confirmed the demand for differential duty (as a result of reclassification) in respect of the 'Inserts' cleared from April, 1976 to December, 1978. The other appeal was registered as Appeal No. 35/81 (F. No. V..2(62)988/81), against the Assessment order No. 35/81 dated 7.1.81, made by the Superintendent of Central Excise, Range 'C', Nasik, by which he indicated that short levy in respect of the 'Inserts' cleared from January, 1979 to April, 1980s differential duty demanded was on account of the reclassification made as aforesaid.

The Collector of Central Excise (Appeals) held :-

"As I understand, the basic difference between the 'Tool Tips' and the so-called 'Inserts' is that the former are mounted on Tool by brazing (soldering), whereas the latter are clamped on the tools and are separable. Having regard to these facts and to the scope of the expression 'in any form or size' appearing in T.I. No. 62, I find difficult to persuade myself to agree with the appellants' contention. Now let us see what the IS:4022.1967 for 'Cemented Carbide Indexable Throw Away Inserts' states. It

says "Indexable inserts are being increasingly used for machining of metal by turning and milling. They derive their name from the fact that the insert is held mechanically in a tool holder for turning or in milling cutter for milling". From this, it is seen that these are known as 'Inserts' because of the manner in which they are inserted in a Tool Holder. In fact at Para 0.6 of the standard, it is stated that this standard is based on Draft ISO Recommendation No. 977 'Throw Away Carbide Tips' of the International Organisation for Standardisation (ISO). From this also, one can infer that these are not two different things, specially in view of the scope of the Item 62. The mere fact that the mode of fixation of Tips and Inserts is different, should not in any way blur the correct classification and for the reasons stated earlier, the inserts are classifiable under T.I. No. 62 as held correctly in the impugned order.'

The Collector further held that the demand for short levy for the period January, 1979 to February, 1979 was barred by limitation. But the demand for the period March, 1979 to April, 1980 was sustainable.

The assessee applied for revision to the Central Government against the aforesaid order passed by the Collector. These cases were transferred to the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT). The Tribunal held that:-

"The undisputed facts about the nature of the products are that both Tool Tips as well as Throw Away Inserts are made from carbide powder of the metals such as tungsten, molybdenum and vanadium. Both are pressed into the required shapes and then sintered (heat treated). Both are affixed on the tool handle and perform the function of machining of metals (turning and milling etc.). Thus, both are tools. So far as the differences between Tool Tips and Throw Away Inserts are concerned, the appellants gave an imposing list of 10 points of difference. The Bench asked them to show the authorities and technical literature etc, on which these points of difference were based. The appellants were not able to produce any. The points of difference between Tool Tips and Throw Away Inserts, as understood by us on the basis of the samples, catalogues and Indian Standard Specifications etc. shown to us are as under :-

(i) The Inserts are clamped on the tool handle and are detach-able. The Tool Tips are brazed (welded or soldered) on the tool handle.

(ii) The Inserts are pre-ground (sharpened) before clearance from the factory. Tool Tips are ground after they are welded on the tool handle.

(iii) Inserts: have multiple edges, when one edge is blunted, the other edge can be put in place by manipulation of the angle. Tool Tips have only one edge.

(iv) When all the edges of the Inserts are blunted after use, the Inserts have to be thrown away. They cannot be sharpened again. The edge of the Tool Tip can, however, be sharpened and used again."

The Tribunal further held that the proposition enunciated by the appellants that in the absence of a statutory definition, reliance has to be placed on the trade parlance and understanding for classification of goods under the Central Excise Tariff, was correct. The only evidence the appellants produced was Tool Tips and Throw Away Inserts, which were inter-nationally known by two different names and that there were two separate ISI Specifications for them. The Tribunal observed that the more important test would be to find out the basic character, function and use of the articles. The Tribunal recorded that the appellants themselves admitted that so far as the names were concerned, the Inserts were also called as Tips'. Item 68, was introduced in the Tariff in 1973. At that time I.S. Specification 4022-1967 was in vogue. In the Chapter 'Foreword' in para-graph 03. Inserts were described as 'Tips'. Paragraph 0.6 further stated that the said Standard was based on Draft ISO Recommendation No.

977 Throw Away Carbide Tips' of the International Organisation for Standardisation. This, according to the Tribunal, went to show that the trade and industry the world over did not consider Inserts and Tips as two different things. In that view of the matter, the Tribunal held that the entry Tool Tips, in any form or size.....' encompassed Throw Away Tips as well as Inserts.

The Tribunal further explained the position in the following manner-

"Both Tips and Inserts are made from the same raw material, undergo practically the same process of manufacture and perform basically the same function of machining the metal. Difference in the method of fixing them on the tool handle and the shorter life span of the Inserts do not make them basically different goods. It only means that Inserts are a separate variety of Tool Tips. From their disposable character or the shorter life span, the Inserts have acquired the adjective Throw Away' and from their method of fixing by insertion or clamping the name Throw Away Inserts' has come to be more commonly used. But in their basic character and use, the Inserts are nothing more than a separate species of the generic item Tool Tips'."

The Tribunal concluded that Throw Away Inserts, being a variety of the generic item Tool Tips, had to be classified as specific item 62 and could not fall under the more generic Item 51-A(iii) - Tools'.

Aggrieved by the decision of the Tribunal, the appellants have now come up to this Court and contend that Carbide Throw Away Inserts, manufactured by the appellants, fell under Item 51- A(iii) of the Central Excise Tariff and not Under Item 62, as held by the Tribunal. The relevant Tariff Items, as they stood at the relevant time, were as under :-

"51A(iii) Tools designed to be fitted into hand tools, machine tools or tools falling under sub-item (ii), including dies for wire drawing, extrusion dies for metals and rock drilling bits;"

"62. Tool Tips, in any form or size, unmounted, of sintered carbides of metals such as tungsten, molybdenum and vanadium."

A distinction has been drawn between 'Tools, designed to be fitted in hand tools, machine tools and tools of other specified categories' under one heading, 'Tool Tips in any form or size' under the other heading. In order to find out whether Throw Away Inserts' manufactured by the appellants fall in the category of Tool Tips or Tools, the essential characteristics of the Inserts will have to be examined. There is no dispute that the Throw Away Inserts are unmounted and are of 'sintered carbides of metals such as tungsten, molybdenum and vanadium'. Therefore, the only question that remains to be considered is whether a 'Throw Away Insert' is a variety of Tool Tip. This controversy is basically one of fact. The Tribunal has pointed out that an Insert is multi-edged, detachable and has a shorter life span. It has to be thrown away when its edges get blunted. The edge of an ordinary Tool Tip can, however, be sharpened and used again.

These facts are not disputed. In fact, the Assistant Collector, who personally visited the factory of the appellant, has recorded :-

"...,....none of the blanks as such can be used as finished product. Blanks for tool tips are first brazed (welded) to the tool or to be more precise tool holder and after welding the same the tips are ground and only one edge of the tip is available for cutting. In case of blanks for inserts all the edges are available for cutting.

Thus there being no difference in the process of manufacture and in the end use except the difference that the so- called inserts which are nothing but tool tips are affixed to the tip of the tool through clamping device and they are replaceable easily while the other tips are permanently welded and

not easily detachable. But in the Case of the latter if the customer has the facilities for brazing the tips to the tools, the customer purchases these tool tips (unground blanks for tips) from the manufacturer and to that extent one can say that even the so- called tool tips are also replaceable."

On behalf of the appellants, it has been contended that to decide this controversy, regard must be had to the market parlance. A customer wanting to buy Throw Away Inserts will not ask for Tool Tips. Similarly, a person wanting to buy Tool Tips will not look for Inserts in the market.

That may be the position. But that will not solve the controversy in this case. If there is a general heading for the purpose of levy of Excise Duty, then every variety of goods falling under that general heading will have to be taxed under that heading. The fact that a particular variety is known by a particular name in the market will not take it out of the general heading. For example, when duty is leviable on biscuits, then every variety of biscuits will be taxed under that heading. A particular type of thin crisp biscuits is known in the market as 'wafer', but basically it is a biscuit. It was held by the Andhra Pradesh High Court in the case of International Foods v. Collector of Central Excise, Hyderabad, (1978) E.L.T. (J 50), that 'wafer' was a kind of biscuit, although it may be different in size and shape from an ordinary biscuit. A pear-shaped drinking glass with a small opening is known as 'snifter'. Because of that, 'snifter' will not cease to be a drinking glass. To decide the question, whether Throw Away Inserts are Tool Tips, nature and function of Inserts will have to be examined. The form or size of the Inserts are quite immaterial for this purpose. From the finding of fact recorded by the departmental authorities and the Tribunal, it appears that the basic character, function and use of an Insert is not different in any way from a Tool Tip.

The finding of the Department which has been upheld by the Tribunal is that both Tool Tips as well as Throw Away Inserts were Carbide Tips for machining of metal. The Inserts had shorter functional life and were replaceable. The Tool Tip had one cutting edge while the Insert had multiple cutting edges. These facts did not alter in any way the basic character and function of the two articles. Both were tips meant for machining of metal. Both were manufactured by the same process and had been made out of same metals. The Inserts were clamped on the holders. The ordinary Tool Tips were brazed on the holders. This will not take the Inserts out of the amplitude of the description in Tariff Item 62 'Tool tips in any form or size....'. This wide description will encompass every type of Tool Tips detachable or otherwise. Whether a Tool Tip is brazed on a tool handle or clamped on a tool handle will not alter its basic character, function or use. The form of the Tool Tip is also immaterial. The detachable Tool Tip is only a variety of Tool Tips and the fact that it is identified by the name 'Throw Away Insert' will not take it out of the ambit of the heading 'Tool Tips in any form or size....'.

Moreover, the Tribunal dealt with the argument based on trade parlances :

":_we find that all that they have to show by way of evidence of trade parlance is that (1) Tool Tips and Throw Away Inserts are known by different names and that (2) there are two separate Indian Standard Specifications for them. We find that these two factors by themselves can hardly constitute adequate evidence of trade parlance..... We find farther that the appellants themselves admit that even so far as the name is concerned, until recently the Inserts were also called as Tips. Item 62 was introduced in the Tariff in Specification IS : 4022-1967 was in vogue. In the Chapter 'Foreword' in paragraph 0.3, this Specification describes the In-serts as 'Tips'. Paragraph 0.6 thereof states further that the said Standard was based on Draft ISO Recommendation No. 997 'Throw Away Carbide Tips' of the International Organisation for Standardisation (ISO), This shown that the trade and industry the world over did not consider Inserts

and Tips as basically two different things, so much so that Inserts were commonly referred to as Tips. Therefore, in the context of such trade understanding, when they entry 'Tool Tips, in any form or size.....' appeared in the Central Excise Tariff, the only reasonable conclusion can be that it encompassed Throw Away Tips or Inserts as well. IS : 4022-1967 has remained current till about three months ago. The appellants state that the revised Specification has dropped the name Tips' for Inserts. We have not been shown the revised Specification, but even, if it is so, it can only mean that a different name has been given to Throw Away type of Tips. There has, however, been no change in the character or use of the article."

The assesses has been unable to bring to the notice of the Court anything to show that the nature and function or composition of a Throw Away Insert is in any way different from an ordinary Tool Tip. The highest that can be said for the appellants is that a Throw Away Insert is a detachable Tool Tip with multiple edges.

We were also referred to the judgment of this Court in the case of Plastnac Machine Manufacturing Co. Pvt, Ltd .v. Collector of Central Excise, Bombay, [1991] Supp. 1 SCC 57. In that case, the question was whether Tie Bar Nuts' of base metal or alloys manufactured with the aid of power and having 'acme threads', could be classified under Tariff Item 52, which at the material time was as under :-

"52. Bolts and nuts, threaded or taped and screws, of base metal or alloys thereof, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power.

Explanation, -The expression "Bolts and nuts, threaded or tapped and screws" used in this item shall include bolt ends, screw studs, screw studding, self-tapped screws, screw hooks and screw rings."

In that case, it was pointed that there was no dispute that Tie Bar Nuts conform to the popular idea of nuts. It was observed :-

"Applying the foregoing principles and considering the fact that the Tie Bar Nuts' function of fixing the platens as stated by the appellants and that of fastening, as argued by them, are not basically different, and the appellants themselves having called the goods as 'nuts', we are of the view that the Tribunal is correct in classifying Tie Bar Nuts under Tariff Item 52. We, therefore, do not find any reason to interfere with the department's prospective modification of the classification. We find no justification for classifying those in the residuary Item 68. As was held in Dunlop India Ltd. v. Union of India, [1976] 2 SCC 241, if an article is classifiable under a specific item, it would be against the very principle of classification to deny it the proper parentage and consign it to the residuary item."

Our attention was also drawn to Brussels Tariff Nomenclature relating to Tool Tips', which is as under :-

"82.07-TOOL-TIPS AND PLATES, STICKS AND THE LIKE FOR TOOL-TIPS, UNMOUNTED, OF SINTERED METAL CARBIDES (FOR EXAMPLE, CARABIDES OR TUNGSTEN, MOLYBDENUM OR VANADIUM),

This heading covers products made by sintering metal carbides (e.g., of tungsten, molybdenum, titanium, tantalum, vanadium or niobium) usually with a binder such as cobalt or nickel.

They are usually in the form of tool-tips, plates, sticks, rods, pellets, rings, etc, and are characterised by great hardness, even when hot, and great rigidity.

In view of their special properties these tips, plates, etc., are welded or

braced on to lathe tools, milling tools, drills, dies or other high-speed cutting tools used for working metals or Other hard materials. They fall within this heading whether sharpened or not, or otherwise prepared, but not if already mounted on tools; in the latter case, they fall within the headings for tools, particularly heading 82,05."

This heading and the explanation thereunder do not support the case of the appellants in any way. On the contrary, it makes it clear that the products made by sintering metals carbides of, inter alia, tungsten, molybdenum, vanadium, will fall under this heading. It has been clarified that these products are usually in the form of Tool Tips, plates, etc. These products will fall within this heading whether sharpened or not or other-wise prepared, but not if already mounted on tools.

It is not the case of the appellant that its products are mounted on tools. The composition of its product is same as mentioned in Tariff Item 62. In shape or form it is not different from a Tool Tip, except that it has multiple cutting edges. Its function is the same as that of a Tool Tip. The fact that it is detachable and has to be thrown away after use, will not change its basic character or function.

In view of the aforesaid, these appeals fail and are dismissed. The parties will bear their own costs,

CIVIL APPEAL NO. 1357 OF 1993

In view of our decision in Civil Appeals Nos. 3579-81 of 1984, this. ... appeal is also dismissed. There will be no order as to cost.