

PETITIONER:
COLLECTOR OF CENTRAL EXCISE, CALCUTTA

Vs.

RESPONDENT:
JAY ENGINEERING WORKS LTD.

DATE OF JUDGMENT 28/11/1988

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

CITATION:
1989 AIR 488 1988 SCR Supl. (3) 998
1989 SCC Supl. (1) 128 JT 1988 (4) 664
1988 SCALE (2) 1529
CITATOR INFO :
E 1990 SC 1893 (6)

ACT:
Central Excises and Salt Act, 1944 Section 35L(b) and
Central Excise Tariff Item 68 and Notification No. 201/79-CE
dated 4th June, 1979 Affixation of name plates on fans
Whether dealer entitled to obtain proforma credit.

HEADNOTE:

The respondent is the manufacturer of electric fans. The company brought into its factory nameplates under Tariff Item 68 of the Central Excise Tariff. The nameplates were affixed to the fans before marketing them. The respondent claimed the benefit of proforma credit in terms of Notification No. 201/79 dated 4-6-1979 which stated that all excisable goods on which duty of excise was leviable and in the manufacture of which any goods falling under Tariff Item No. 68 being 'the input' had been used, were exempt from so much of the duty of excise leviable thereon as was equivalent to the duty of excise already paid on the inputs. The respondent claimed the benefit of proforma credit for the goods i.e. nameplates on the plea that the goods were intended to be used as inputs in the manufacture of electric fans.

The Asstt. Collector, Central Excise disallowed the proforma credit. The respondent preferred an appeal before the Collector (Appeals) Central Excise, and the same was allowed treating the said goods as inputs in terms of the June 1979 Notifications.

The Department appealed to the Customs, Excise and Gold (Control) Appellate Tribunal which held that even though electric fans could function without the nameplates, no electric fan was removed from the factory for being marketed without the nameplates, as the Affixation of the nameplate was considered an essential requirement from the point of view of the Excise Tariff.

The Department therefore filed an appeal under Section 35 L(b) of the Central Excises and Salt Act, 1944 before this Court.

Dismissing the appeal, this Court.

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HELD: 1. The Department's instructions requiring every manufacturer to affix the nameplates on the fans, indicate that nameplate was an essential ingredient to complete the process of 'manufacture' for marketable electric fans. [1001E]

2. The Tribunal was right in arriving at the conclusion that the nameplate was not a piece of decoration. Without the nameplates, the electric fans as such, could not be marketed; and that the dealer was entitled to the benefit of the Notification No. 201/79-CE for the purpose of obtaining proforma credit. [1001F-G]

3. Fans with nameplates, have certain value which the fans without the nameplates, do not have. If that be so, then the value added for the accretion of nameplate was entitled to proforma credit in terms of the said notification. It is true that an electric fan may perform its essential functions without affixation of the nameplate, but that is not enough. Electric fans do not become marketable products without affixation of nameplates. [1001G-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1630 of 1988.

From the Judgment and Order dated 21.1. 1988 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. 232 1/83-BI in Order No. 18/ 1988 'B'

G. Ramaswamy, Additional Solicitor General, K. Swami and Mrs. Sushma Suri for the Appellant.

Ravinder. Narain. P.K. Ram and D.N. Misra for the Respondent.

The Judgment of the Court was delivered by SABIYASACHI MUKHARJI, J. This is an appeal against the decision and order of the Customs, Excise and Gold (Control) Appellate Tribunal under Section 35L(b) of the Central Excises and Salt Act, 1944 (hereinafter called 'the Act').

The respondent is the manufacturer of electric fans, and brought into it 9 factory nameplates under tariff item 68 of the erstwhile Central Excise Tariff. The nameplates were affixed to the fans before marketing them. The respondent claimed the benefit of proforma credit in terms of

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Notification No. 201/79 dated 4th June, 1979, which was for the purpose of relief on the duty of excise paid on goods falling under Tariff Item 68, when these goods are used in the manufacture of other excisable goods. The said notification stated in supersession of the notification No. 178/77 of the Central Excise, dated 18th June, 1977, all excisable goods on which duty of excise is leviable and in the manufacture of which any goods falling under Item No. 68 (hereinafter referred to as 'the inputs') have been used, are exempt from so much of the duty of excise leviable thereon as is equivalent to the duty of excise already paid on the inputs.

It enjoins that the procedure set out in the Appendix should be followed; and further that nothing contained in the said notification shall apply to the said goods which are exempted from the whole of the duty of excise leviable thereon or are chargeable to nil duty.

It further stipulated that the credit of the duty allowed in respect of the inputs shall not be denied or varied on the ground that part of such inputs is contained

in any waste, refuse or by-product arising during the process of manufacture of the said goods irrespective of the fact that such waste, refuse or by product is exempt from the whole of the duty of excise leviable thereon or is chargeable to nil rate of duty. or is not mentioned in the declaration referred to in the Appendix to this notification. Provided, also that nothing contained in any notification should apply to the said goods on which duty of excise is paid through bandrols.

The Appendix provides the procedure. The benefit of proforma was claimed for the said goods on the plea that the goods were intended to be used (as inputs) in the manufacture of electric fans. The Asstt. Collector, Central Excise, Calcutta-XV Division, disallowed proforma credit to the said goods on the ground that nameplates are not essential ingredients or raw-materials in the manufacture of finished-goods i.e. electric fans and thus cannot be considered as inputs in terms of the notification No. 201/79 dated 4.6.1979.

The respondent preferred an appeal against the decision before the Collector (Appeals) Central Excise, Calcutta, and the same was allowed holding, inter alia, that para 8 of the supplement to the manual of Departmental instructions on electric fans, has clarified the utility of the use of "nameplate" on electric fan and, hence, viewed from this

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angle, the said goods should be treated as 'inputs' in terms of the notification No. 201/79 dated 4th June, 1979.

The Collector, therefore, set aside the order of the Asstt. Collector. There was an appeal to the Tribunal. The Tribunal in its order noted that the short point requiring decision in this case was: whether the nameplate could be considered as component part of the electric fan, so as to be eligible for proforma credit under the exemption notification. The Tribunal further noted that no electric fan was removed from the factory for being marketed without the nameplate. The Tribunal also noted that even though it could be said that electric fans could function without the nameplates, for actual marketing of the fan, the affixation of the nameplate was considered as essential requirement. The Tribunal further noted that it was an essential requirement even from the point of view of the Excise Tariff because the rate of duty on different types of electric fans, depended on their variety and the sweep size of the fan. This information was given in the nameplate only.

It appears that the Department's own instructions in their Commodity Manual made it obligatory for every manufacturer to affix the nameplates on the fans. In those circumstances, namely, for marketing the nameplates, these were essential. In other words, they could not be marketed without the nameplates. The relevant particulars of the fan for the determination of duty, depended on the particulars which are contained only in the nameplates. The Department's instruction requiring every manufacturer to affix the nameplates on the fans. indicate that nameplate was an essential ingredient to complete the process of manufacture for marketable electric fans.

It those circumstances, in our opinion, the Tribunal was right in arriving at the conclusion that the nameplate was not a piece of decoration without the nameplate, the electric fans as such, could not be marketed; and that the dealer was entitled to the benefit of the notification No. 201/79-CE for the purpose of obtaining proforma credit. Fans with nameplates, have certain value which the fans without the nameplates, do not have. If that be so, then the value

added for the accretion of nameplate was entitled to proforma credit in terms of the said notification. It is true that an electric fan may perform its essential functions without affixation of the nameplate, but that is not enough. Electric fans do not become marketable products without affixation of nameplates.

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In that view of the matter, it appears to us that the Tribunal followed the correct principles applicable in this case. All the relevant and material factors were taken into consideration. The approach of the Tribunal was right. The decision arrived at on that basis appears to be correct.

In the premises the appeal fails and is according dismissed
S.K.A.

Appeal dismissed.