

PETITIONER:
BHARAT FORGE & PRESS INDUSTRIES (P) LTD.

Vs.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE, BARODA, GUJARAT

DATE OF JUDGMENT 16/01/1990

BENCH:
RANGNATHAN, S.
BENCH:
RANGNATHAN, S.
OJHA, N.D. (J)
VERMA, JAGDISH SARAN (J)

CITATION:
1990 AIR 616 1990 SCR (1) 60
1990 SCC (1) 532 JT 1990 (1) 34
1990 SCALE (1) 30

ACT:
Central Excises and Salt Act, 1944: First Schedule
Item 26AA (iv)--'Pipe fittings'--Levy of excise duty--Whether
could be classified as 'pipes and tubes'--Whether a
different commercial commodity.

HEADNOTE:

Steel pipes and tubes (including blanks therefore) all sorts, whether rolled, forged, spun, cast, drawn, annealed, welded or extruded were dutiable under Item 26AA(iv) of the First Schedule to the Central Excises and Salt Act, 1944. The Department, however, sought to classify 'pipe fittings' such as elbows, bends and reducers, manufactured by the appellants, from out of the steel pipes purchased from the open market on payment of excise duty, under Item 68 which was a residuary entry, on the ground that they were known in the market differently as pipe fittings, a totally different commercial commodity. The appellants' claim that the process undertaken by them did not amount to manufacture as the products turned out were nothing but pipes and tubes, and that they were being virtually asked to pay duty twice over on the same product, was rejected by the Appellate Tribunal. Allowing the appeal under s. 35L(B) of the Act, the Court,

HELD: 1. Unless the Department could establish that the goods in question could by no conceivable process of reasoning be brought under any of the tariff items, resort could not be had to the residuary item. This has not been done in the instant case. [62F]

2.1 The use of the words 'all sorts of' and the reference to the various processes by which the excisable items could be manufactured set out in Entry 26AA(iv) are comprehensive enough to encompass all sorts of pipes and tubes. [64F]

2.2 The expression "pipe fittings" merely denotes that it is a pipe or tube of a particular length, size or shape. Pipe fittings do not cease to be pipes and tubes; they are only a species thereof. In order to achieve

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fully the purpose for which the pipes and tubes are manufactured, it is necessary to manufacture smaller pieces of

pipes and tubes and also to manufacture them in such a shape that they may be able to conduct liquids and gases, passing them through and across angles, turnings, corners and curves or regulating their flow in the manner required. This is done by a process of forging, welding, hammering and so on applied to the longer tubes. There is no change in their basic physical properties and there is no change in their end use. They are merely intended as accessories or supplements to the larger pipes and tubes. It could not, therefore, be said that pipe fittings, though they may have a distinctive name or badge of identification in the market, were not pipes and tubes. [63B-C, 62G-63A, 64E]

Indian Aluminium Cables Ltd. v. Union of India & Ors., [1985] 3 S.C.C. 284, referred to.

3. No doubt "tubes and pipes" and "pipe fittings" fall under different sub-items under the Harmonised Code as well as under the Customs Cooperative Council Nomenclature where two expressions are used in contrast and the sub-classification is more detailed. That dichotomy could not be imported into the instant case where there was only one comprehensive and generic entry. [65B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1057 of 1987.

From the Order dated 29.12.1986 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. ED/SB/ 7 A No. 186/82-BI in Order No. 826/86-BI.

D.N. Mehta, R.C. Misra and Dr. Meera Agarwal for the Appellants.

V.C. Mahajan and R.P. Srivastava for the Respondent.

The Judgment of the Court was delivered by

RANGANATHAN, J. Item 26AA(iv) of the Central Excise Tariff reads as follows:

"Pipes and tubes (including blanks therefore) all sorts, whether rolled, forged, spun, cast, drawn, annealed, welded or extruded"

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The appellants are engaged in the manufacture of pipe fittings such as elbows, bends and reducers. They purchase steel pipes on payment of excise duty from indigenous producers from the open market and they also get steel tubes by way of import. The appellants cut the pipes and tubes into different sizes, give them shape and turn them into pipe fittings in their factories by heating in a furnace (at a temperature between 66 degrees C and 900 degrees C) hammering and pressing. The short question in this appeal is whether the pipe fittings so produced by the petitioners also fall under Item 26AA(iv) or whether they should be classified under tariff item 68 which is the residuary entry.

The case of the appellants is that the products manufactured by them are also nothing but pipes and tubes and that they are being virtually asked to pay duty twice over on the same product. According to them the processes undertaken by them do not amount to manufacture and no new product has come into existence as a result of the processes employed in their factories. They say that the pipes and tubes retain their material and original character and use and they can also be had only from dealers dealing in pipes and tubes. This claim of the appellants has not been accepted by the Central Customs Excise and Gold Appellate Tribunal and hence the present appeal under section 35L(b) of the Central

Excises and Salt Act, 1944.

The question before us is whether the Department is right in claiming that the items in question are dutiable under tariff entry No. 68. This, as mentioned already, is the residuary entry and only such goods as cannot be brought under the various specific entries in the tariff should be attempted to be brought under the residuary entry. In other words, unless the department can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort cannot be had to the residuary item. We do not think this has been done. Looking at Tariff item 26AA(iv), it encompasses all sorts of pipes and tubes. It is also clear that it is of no consequence whether the pipes and tubes are manufactured by rolling, forging, spinning, casting, drawing, annealing, welding or extruding. It is true that initially pipes and tubes may be obtained from sheets, billets or bars by various processes, but the process of manufacture of pipes and tubes does not end there. In order to achieve fully the purpose for which the pipes and tubes are manufactured, it is necessary to manufacture smaller pieces of pipes and tubes and also to manufacture them in such a shape that they may be able to conduct liquids and gases, passing them through and across angles, turnings,

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corners and curves or regulating their flow in the manner required. Smaller pieces of pipes and tubes differently shaped are manufactured for this purpose. They are merely intended as accessories or supplements to the larger pipes and tubes. They are pipes and tubes made out of pipes and tubes. There is no change in their basic physical properties and there is no change in their end use. There is no reason why these smaller articles cannot also be described as pipes and tubes.

But, it is said, they are known in the market differently as pipe fittings, a totally different commercial commodity. The expression "pipe fittings" merely denotes that it is a pipe or tube of a particular length, size or shape. "Pipe fittings" do not cease to be pipes and tubes; they are only a species thereof. This aspect of the matter can be illustrated by the decision of this Court in *Indian Aluminium Cables Ltd. v. Union of India and others*, [1985] 3 S.C.C. 284. In that case the question was whether "Properzi Rods" manufactured and cleared by the assessee fell within Entry 27(a)(ii) of the First Schedule to the Central Excises and Salt Act, I of 1944. That entry read as follows:

Aluminium

(a) wire bars, wire rods and castings, not otherwise specified.

It was contended, on behalf of the appellant, inter alia, that, commercially, Properzi Rods are not known as wire rods in the trade and that a person wanting to purchase Properzi Rods asks specifically for Properzi Rods and not for wire rods. Reliance was also placed on the view taken by this Court that words and expressions describing an article in a tariff schedule should be construed in the sense in which they are understood in the trade by the dealer and the consumer. The Court held that Properzi Rods were only a species of wire rods. It pointed out:

"To sum up the true position, the process of manufacture of a product and the end use to which it is put, cannot necessarily be determinative of the classification of that product under a fiscal schedule like the Central Excise Tariff. What is more important is whether the broad description of the article fits in with the expression used in the

Tariff. The aluminium wire rods, whether obtained by the extrusion process, the conventional process or by Properzi process,, are still aluminium wire rods. The process of

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manufacture is bound to undergo transformation with the advancement in science and technology. The name of the end-product may, by reason of new technological processes, change but, the basic nature and quality of the article may still answer the same description. On the basis of the material before us, it is not possible to record a positive finding that Properzi Rods and wire rods are treated as distinct items in commercial parlance. Properzi Rod is a wire rod subjected to the Properzi process and is used for transmission of high voltage electric current."

The position is somewhat similar in the present case. As explained above, the goods described in the tariff, namely, pipes and tubes are designed to meet various types of requirements. Normally pipes and tubes are produced as long and straight pieces. But by themselves they cannot fulfil all the needs or the end use for which they are intended. To get the maximum use out of the pipes and tubes, it is necessary not only to produce long and straight pipes and tubes but also to turn out pipes and tubes of smaller dimensions and of different shapes and curves such as bends, elbows, 'T' pieces, 'Y' pieces, plugs, caps, flanges, joints, unions, collars and so on. This is done by a process of forging, welding, hammering and so on applied to the longer tubes but basically the items remain the same and the use also remains the same. The tariff entry calls for no distinction between pipes and tubes manufactured out of sheets, rods, bars, plates or billets and those turned out from larger pipes and tubes. In these circumstances it is difficult to say that pipe fittings, though they may have a distinctive name or badge of identification in the market, are not pipes and tubes. It is true that all pipes and tubes cannot be described as pipe fittings. But it would not be correct to say that pipe fittings are not pipes and tubes. They are only a species of pipes and tubes. The use of the words "all sorts" and the reference to the various processes by which the excisable item could be manufactured set out in the tariff entry are comprehensive enough to sweep within their fold the goods presently under consideration.

A certain amount of reliance has been placed on entries in the Harmonised Code as well as in the Customs Cooperative Council Nomenclature (CCCN). We do not think that these entries and specifications are very helpful. The CCCN contains a number of entries in Section XV, namely, heading Nos. 73.17 to 73.20. While heading Nos. 73.17 to 73.19 talk of pipes, tubes and conduits, heading No. 73.20 speaks of "tube and pipe fittings (for example, joints, elbows, unions

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and flanges) of iron and steel". Section XVI also deals with some types of pipes and tubes. The position is similar under the Harmonised Code. In Section XV, there is an equally meticulous sub-division. Heading Nos. 73.02 to 06 deal with various types of pipes and tubes. Then comes heading No.73.07 which specifically talks of "tube or pipe fittings (for example, couplings, elbows, sleeves) of iron and steel (including stainless steel)" and proceeds to set out various subdivisions of these items one of which is (7307.23 & 7307.93) "butt welding fittings" which is the item of manufacture in the present case. It is true that "tubes and pipes" and "pipe fittings" fall under different subitems under the above Codes where the two expressions are used in contrast and the sub-classification is more detailed. That

dichotomy cannot be imported into the present context where there is only one comprehensive and generic entry. We cannot, therefore, derive any assistance from those entries.

For the above reasons we are of the opinion that the view taken by the Tribunal is not correct and that the assessee's contention that the goods in question fall under item 26AA(iv) should be accepted. We, therefore, set aside the order of the Tribunal and direct the modification of the assessments accordingly. In the circumstances, however, we make no order as to costs.

P.S.S.
allowed.
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Appeal

JUDIS