

PETITIONER:
PLASMACH MACHINE MANUFACTURING CO. PVT.LTD.

Vs.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE, BOMBAY.

DATE OF JUDGMENT 27/11/1990

BENCH:
SAIKIA, K.N. (J)
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SAIKIA, K.N. (J)
SAHAI, R.M. (J)

CITATION:
1991 AIR 999 1990 SCR Supl. (3) 384
1991 SCC Supl. (1) 57 JT 1990 (4) 549
1990 SCALE (2) 1149

ACT:

Central Excises and Salt Act, 1944--Section 3 and First
Schedule Items Nos. 52 and 68--Tie Bar Nuts--Assessability
to duty.

HEADNOTE:

The appellants are the manufacturers of Injection Moulding Machines and their 19 types of parts, one of which is called 'Tie Bar Nuts' which are stated to be used to fix the platens in correct distances in between tie bars. The appellants submitted their classification lists for the year 1981-82 and listed the machines as also the Tie Bar Nuts under Tariff item No. 68. The Superintendent, Central Excise, by his letter dated 20.10.81 forwarded the classification list and directed the appellants to file a separate classification list for the Tie Bar Nuts under tariff item No. 52, take out licence for the same and also to furnish value and clearance of Tie Bar nuts for the year 1980-81 and 1981-82. Aggrieved the appellants appealed to the Collector of Central Excise (Appeal) Bombay, who, while allowing the appeal, held that the Tie Bar Nuts were not available in the market and were designed for a particular purpose for Injection Moulding Machines and could not be used for any other purpose. Thereupon the Department preferred appeal to the Central Custom, Excise and Gold Control Tribunal, New Delhi and contended before the Tribunal that the sample of the product showed that it was a plain nut and no special features were apparent and the main function of the Tie Bar Nuts was to fasten. The Tribunal allowed the appeal holding that the Tie Bar Nuts would merit classification under Tariff Item No. 52. The appellants have thus filed this appeal under section 35L of the Central Excise and Salt Act, 1944.

Dismissing the appeal, this Court,
HELD: If according to law Tie Bar Nuts fall within tariff Item 52, the fact that department earlier approved their classification under tariff item 68 will not stop it from revising that classification to one under item 52. There could be no estoppel against a statute. [387F-G]
If an article is classifiable under a specific Item, it

would be

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against the very principle of classification to deny it the proper percentage and consign it to the residuary item. [391D]

There is no dispute that Tie Bar Nuts conform to the popular idea of nuts. [390H]

The 'Tie Bar Nuts' function of fixing the platens as stated by the appellants and that of factening, 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. There is therefore, no reason to interfere with the department's order and no justification for classifying those in the residuary item 68. [391C]

M/s. Elson Machines Pvt. Ltd. v. Collector of Central Excise, [1989] Suppl. 1 SCC 671; Bhor Industries Ltd., Bombay v. Collector of Central Excise, Bombay, [1989] 1 SCC 602; M/s. Ujagar Prints and Ors. v. Union of India and Ors., [1989] 3 SCC 488; Simonds Marshal Ltd. v. M.R. Baralikar, Assistant Collector of Central Excise, Pune, [1986] 22 ELT 378; Indo International Industries v. Commissioner of Sales Tax, U.P., [1981] 3 SCR 294; Dunlop India Ltd. v. Union of India, [1976] 2 SCC 241; Atul Glass Industries (Pvt.) Ltd. v. Collector of Central Excise, [1986] 3 SCC 480; Indian A-7 3

and M/s. Asian Paints India Ltd. v. Collector of Central Excise, [1988] 2 SCC 470, Referred to.

JUDGMENT: