

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 649-650 OF 2001

COMMISSIONER OF CENTRAL EXCISE & ANR.

Appellant (s)

VERSUS

M/S. SHERVANI INDUSTRIAL SYNDICATE LTD.

Respondent(s)

(With office report)

Date: 01/03/2006 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE G.P. MATHUR

For Appellant(s)

Ms.Shalini Kumar, Adv.

Mr. P. Parmeswaran, Adv.

For Respondent(s)

Mr.A.R.Madhav Rao, Adv.

Mr. Alok Yadav, Adv.

Mr. Karan Talwar, Adv.

Mr.M.P.Devanath, Adv.

UPON hearing counsel the Court made the following

O R D E R

The Appeals are dismissed. Parties to bear their own costs.

(PARVEEN KR. CHAWLA) (KANWAL
SINGH)
Court Master Court
Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.649-650 OF 2001

Commissioner of Central Excise & Another ..Appellant(s)

VERSUS

M/s Shervani Industrial Syndicate Limited & Anr. .Respondent(s)

O R D E R

The point involved in the present appeals is 'as to whether the appeals filed by the Revenue are required to be rejected, upholding the order of the Tribunal and that of the Collector(Excise) to the effect that torch switches manufactured by the respondents are classifiable under Tariff Item 68 of the Schedule to the erstwhile Central Excise Tariff and not under Tariff 61 as contended by the revenue.

The respondents are engaged in the manufacture of switches for use in the manufacture of torches. The first respondent had cleared switches from its factory during the period from 18th June, 1977 to 31st December, 1982 on payment of dut

Y

applicable under Tariff Item 68 of the erstwhile Central Excise Tariff. The department

was of the view that torch switches were covered by Tariff Item 61 which covered

Electric Lighting Fittings - Switches, Plugs, Sockets all kinds.

Two show cause notices were issued to the first respondent raising

demands for differential duty of Rs.50,34,261.78 and Rs.238.62 on the ground that

switches were covered under Tariff Item 61 and not under the residuary entry under

Tariff Item 68. On the same ground, demands were raised for payment of

differential duty of Rs.4,09,00,188.25 vide ten separate show cause notices issued to the second respondent.

The Collector of Central Excise applying the test of common parlance held that 'torch switches' are not electric lighting fittings so as to be classified under Tariff Item 61 but would be classified as parts of torch under Tariff Item 68. It was held that those who are trading in or dealing with electric lighting fittings, etc. do not trade in, or deal with the purchase and sale of torch switches. That it is not an electrical item and is not dealt with by persons dealing in such goods. Accordingly, he held that 'torch switches' are part of a torch and therefore cannot be classified as an item of electric lighting fittings.

Aggrieved against the aforesaid decision of the Collector, Central Excise, the appeals were filed by the department before the Custom, Excise & Gold (Control)

Appellate Tribunal, New Delhi (for short' the Tribunal') which have been dismissed by the impugned order. Initially there was a difference of opinion between the two members of the Tribunal who heard the appeals. The matter was referred to the Third Member to resolve the difference of opinion. The Third Member upheld the view taken by the Collector, Central Excise and accordingly the appeals were ordered to be dismissed by a majority of 2 : 1.

The respondents relied upon the affidavits of S/Shri N.S. Darbari, Shankarlal and S.C. Malik. All these persons claim themselves to be engaged in marketing of various kinds of electric lighting fittings including electric lighting switches of all kinds. In their affidavits, they stated that items manufactured by the respondents were sold in the market as a part of a torch and not as electric lighting fitting. As against this, the department did not produce any evidence.

Tariff Items 61 and 68 read as under:

"61. Electfic Lighting Fittings, namely :- Switches. Plugs and Sockets, all kinds; Chokes and Starters for Fluorescent Tubes.

68. All other goods, not elsewhere specified, but excluding-

- (a) alcohol, all sorts, including alcoholic liquors for human consumption;
- (b) opium, Indian hemp and other norcotic drugs and narcotics; and

(c) dutiable goods as defined in section 2 (c) of the Medicinal and Toilet Preparation (Excise Duties) Act, 1955 (16 of 1955)

Explanation - For the purposes of this Item, goods which are referred to in any preceding Item in this Schedule for the purpose of excluding such goods from the description of goods in that Item (whether such exclusion is by means of an Explanation to such Item or by words of exclusion in the description itself or in any other manner) shall be deemed to be goods not specified in that Item. "

This Court in Union of India vs. J.M.A. Industries reported in 1995 (77) ELT

278 (SC), applying the common parlance test, held that the switches used in a motor

vehicle would not fall under Tariff Item No. 61. It was held:

"...The question, therefore, is whether the goods manufactured by the respondent for use in motor vehicles can be said to be covered in Tariff Item 61. The Item has been extracted above. The expression 'electric lighting fittings' is normally understood in context with the household. The dippers and switches manufactured for use in cars are not understood either in the trade circle or in common parlance as electric lighting fittings. It is true that the words 'switch

es,

plugs and sockets' have been widened by use of the expression 'all kinds', but the words used have to take colour from the genesis of the entry, that is, electric lighting fittings. Since the main or the principal entry deals with electric lighting fittings in the house-holds, the switches and dippers

manufactured by the respondent for exclusive use in motor vehicles cannot be said to be covered in the aforesaid entry.

The view taken by the High Court, therefore, appears to be well founded in law."

Following the aforesaid decision of this Court and especially in view of the fact that the department did not lead any evidence to rebut the evidence led by the respondents, in our view, the switches used in a torch would fall under the residuary entry under Tariff Item 68 and not under Tariff Item 61. Accordingly, these Appeals are dismissed leaving the parties to bear their own costs.

...J.

.....

[ASHOK BHAN]

NEW DELHI;
....J.

.....

MARCH 01, 2006.

[G.P. MATHUR]