

CASE NO.:
Appeal (civil) 9351-52 of 1995

PETITIONER:
Collector of Central Excise, Aurangabad.

RESPONDENT:
M/s.Motor Industries Co. Ltd. & Anr.

DATE OF JUDGMENT: 31/01/2003

BENCH:
N.Santosh Hegde & B.P.Singh.

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE, J.

These appeals arise out of a decision of the Customs, Excise & Gold (Control) Appellate Tribunal (the tribunal), wherein the tribunal by a majority judgment held that the respondents are entitled to the benefit of the exemption granted under Notification No.217/85 as amended in regard to the parts of nozzle and nozzle holders used by them in the manufacture of an internal combustion engine (ICE diesel oil operated).

Before the tribunal the issue arose in view of the stand taken by the Department that the appellant is not entitled to the benefit of the said notification because the notification in question having not exempted nozzle and nozzle holders, the respondent cannot claim the benefit of the said notification in respect of the parts of nozzle and nozzle holders on the ground that they are used in the manufacture of original equipment viz. internal combustion engines.

The Judicial Member agreed with the view of the Department that since the notification in question specifically excluded the benefit of exemption to nozzle and nozzle holders, the respondent cannot claim the said benefit in regard to the parts of such nozzle and nozzle holders even though they are used in the manufacture of diesel oil operated combustion engine, which the respondent manufactures; whereas the Technical Member in his differing order came to the conclusion that the authorities of the Department had taken an erroneous view that parts of nozzle and nozzle holders are equivalent to nozzle and nozzle holders themselves. He also held that a part of nozzle and nozzle holder would become a nozzle and nozzle holder only after a series of process of assembling involving land, labour and capital, therefore, parts of nozzle and nozzle holders cannot be equated with nozzle and nozzle holders themselves, and in view of the fact that the notification in question did not specifically exclude the parts of nozzle and nozzle holders from the benefit of exemption, the said learned Member held that the respondent is entitled to the benefit of exemption. Hence, he differed from the Judicial Member.

Consequently, the issue was referred to a third Member who framed the following points for consideration :

"Whether in the facts and circumstances of the case parts of nozzle and nozzle holders are entitled to the benefit of notification 217/85 (as amended), as held by the Technical Member.

Or

they are not entitled to the benefit of the said notification and matter requires to be remanded for considering the claim of benefit of notification 216/87-CE dated 15.9.1987 and notification 112/88-CE dated 1.3.1988, as held by the Judicial Member."

Considering the said points, the third Member agreed with the Technical Member. While doing so, he held that parts of nozzle and nozzle holders cannot be deemed to be nozzle and nozzle holders which come into existence only as a result of series of process of assembling of various parts. In coming to this conclusion, the learned Member relied upon a judgment of this Court in the case of Union of India v. M/s. Tarachand Gupta & Bros. (1983 ELT 1456) wherein this Court considering the claim of an importer who imported various parts of motorcycles in knocked down condition, claimed the benefit of an import licence issued to him for importing parts and accessories of motorcycles. The contention of the revenue in that case was that in reality these parts were only knocked down parts of the motorcycles which could be re-assembled as motorcycle(s) after their import, hence, they were not entitled to import such knocked down parts of a motorcycle was rejected by this Court holding that since the importer had imported parts and accessories of mopeds, his imports were covered by Entry No. 295 of the Schedule to the Import Trade Control Order and it was not permissible for the Collector to hold that they were not covered by Entry No. 295 on the ground that when assembled together they would constitute other articles like a motorcycle, scooter etc. Following the said judgment of this Court the third member agreed with the Technical Member holding that subject to the fulfilment of other conditions of the notification, parts of nozzle and nozzle holders are entitled to the benefit of exemption under Notification No.217/85, as amended. Thus, by a majority the tribunal held in favour of the respondent.

Mr. A K Ganguli, learned senior counsel appearing for the Department before us, contended that when the notification specifically excludes the benefits of exemption to nozzle and nozzle holders, it cannot be said that parts of such nozzle and nozzle holders are not excluded by the said notification. He contended that ultimately it is these parts which constitute the nozzle and nozzle holders which the exemption notification had excluded from its benefit, therefore, it cannot be said that part of a part constituting a product, can be treated separately from the part which is not exempted.

Whereas Mr. Joseph Vellapally, learned senior counsel appearing for the respondent, contended that the majority Members were justified in coming to the conclusion that nozzle and nozzle holders are not the same as part of the said nozzle and nozzle holders and the exemption notification not having specifically excluded these parts, it is not open to the Department to equate the parts as being the same as nozzle and nozzle holders. He contends that ultimately these parts be it a part of nozzle or nozzle holders or not would become a part of the ultimate product that is the internal combustion engine, therefore, it would become a part of the engine and not part of nozzle or nozzle holder on the principle "a part of a part is a part of the whole". That apart, learned counsel pointed out to us that the Department itself has subsequently accepted the verdict of the tribunal without any reservation as could be seen from the application made to the Collector of Appeals under Section 35E(4) of the Central Excises & Salt Act, 1944 by the Assistant Collector concerned on 24.9.1994. Learned counsel for the respondent pointed out that based on this application the Collector of Central Excise & Customs (Appeals), Pune, allowed the prayer of the said Assistant Collector and following the judgment of this Court in the case of Kamlakshi Finance Corpn. Ltd. [1991 (55) ELT 453 (SC)] held in favour of the respondent by

holding that parts of the nozzle and nozzle holders are eligible for the benefit of exemption under Notification No.217/85 subject to fulfilment of other conditions of the notification. The said order of the Appellate Collector has become final and is being followed by the Department till date. Learned counsel also relied upon a Board Circular No.14/88 dated 26.5.1988 wherein it was held that in view of the fact that the parts which go into the manufacture of component parts that are in turn used in the manufacture of diesel oil operated internal combustion engines, hence, would also be entitled to exemption in terms of Notification No.217/85 subject to fulfilment of other conditions. Therefore, in view of the above the learned counsel for the respondent contends that the appeal of the Department before us is an exercise in futility since the Department has accepted the claim of the respondent knowing very well these appeals are pending and without making those orders subject to the judgment of this Court.

We find substantial force in the argument of the learned counsel for the respondent. It is true that the Department has challenged the finding of the majority members before us in these appeals but as pointed out by the learned counsel for the respondent, the Department itself without reference to these appeals decided to get the order which was in its favour, set aside by invoking the provisions of Section 34E(4) of the Act, and having obtained such an order from the Appellate Collector, we do not think it proper for the Department now to continue to agitate this issue. We may make it clear that neither the application under Section 34E(4) of the Act filed by the Assistant Collector nor the order made therein by the Appellate Collector are made subject to the decision of this Court. That apart, as pointed out by learned counsel for the respondent, the Board itself by its Circular referred to hereinabove, has held that parts of nozzle and nozzle holders are not nozzle and nozzle holders for the purpose of the notification in question so as to deny the benefit of exemption to those parts. We are told that this decision of the Appellate Collector and that of the Board are being followed by the Department without demur. In the said view of the matter we do not think it is necessary for us to go into the main question in regard to which there was difference of opinion amongst the Members of the tribunal.

For the reasons stated above, these appeals fail and the same are dismissed.