UNITED OFFSET PROCESS PVT. LTD.

v.

ASSTT. COLLECTOR OF CUSTOMS, BOMBAY AND ORS.

OCTOBER 14, 1988

[SABYASACHI MUKHARJI AND K. JAGANNATHA SHETTY, JJ.]

Customs Tariff Act: Schedule Entries 90.10, 90.25 and 84.35—Colour Scanner Chromagraph C-299—Assessability to customs duty—Whether printing machinery—No specific technical definition—Meaning attributed to the expression used by those dealing in it.

The appellant imported Colour Scanner Chromagraph C-299 under the Import Trade Control Policy for the year 1981-82, under the caption "printing machinery" and filed the papers for clearance under Tariff Item No. 84.35. The Assistant Collector assessed the goods under Tariff heading 90.25(i) and levied customs duty at the rate of 40% plus 5% auxiliary duty plus 8% c.v.d. After payment of duty as assessed the goods were cleared by the appellant. Later, on the Assistant Collector issued a notice to the appellant for recovery of Less Charges Demand amounting to Rs.7,60,032.72 on the ground that the Colour Scanner is assessable under the heading 90.10 at the rate of 100% plus 20% plus 8% c.v.d. The contentions of the appellant that it was used only in printing industry and definitely not in photography or cinematagraphy laboratories and that it was capable of being used as ancillary equipment in the printing industry only, failed before the Assessing Authority. In an appeal filed by the appellant before the Tribunal, it observed that the goods in question could not be considered such goods as to attract duty under any of the Entries 84.35, 90.07 or 90.25, and held that the only possibility left was that of Entry 90.10 under which the goods would attract duty. In an appeal before this Court the question involved in the matter was as to what was the proper tariff entry under which the goods in question fell and were as such classifiable.

Allowing the appeal and remanding the matter to the Tribunal, this Court,

HELD: There is no specific technical definition as such provided in the Customs Tariff Act or in the notification. If there is no meaning attributed to the expressions used in the particular enacted statute then the items in the customs entries should be judged and analysed on the

A **basis of how these expressions are used in the trade or industry or in the market or, in other words, how these are dealt with by the people who deal in them, provided that there is a market for these types of goods. This principle is well-known as classification on the basis of trade parlance. It is a well-known principle that if the definition of a particular expression is not given, it must be understood in its popular or**
B **common sense, viz., in the sense how that expression is used everyday by those who use or deal with those goods. [535C-E]**

In incorporating items in the statutes like Excise, Customs or Sales-tax whose primary object is to raise revenue and for which to classify diverse products, articles and substance, resort should be had not to the scientific and technical meaning of substance but to their
C **popular meaning, viz., the meaning attached to these expressions by those dealing in them. [535E-F]**

In the instant case, there is no evidence as to how these goods are dealt with in the trade or industry. There is no technical definition of
D **the expressions used. In that view of the matter, the true approach of the Tribunal should have been to find out to the correct meaning of the items, i.e., the meaning attributed to the expression used by those dealing with it in the trade. [536A-B]**

E **[1972] 1 SCR 168;** *King* **v.** *Planter's Company*, **[1951] CLR (EX.) 122;** *Two Hundred Chests of Tea*, **[1824] 6 L.ed. 128;** *State of West Bengal & Ors.* **v.** *Washi Ahmed etc.*, **[1977] 3 SCR 149;** *Union of India* **v.** *Delhi Cloth & Gen. Mills,* **[1963] Suppl 1 SCR 586;** *Ramavatar Budhaiprasad v. Assistant S.T.O. Akola*, **[1962] 1 SCR 279;** *South Bihar Sugar Mills Ltd.* **v.** *Union of India,* **[1968] 3 SCR 21 and** *Porritts & Spencer (Asia)*
F *Ltd.* **v.** *State of Haryana*, **[1979] 1 SCC 82, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2129 of 1984.

From the Judgment and Order dated 13.3.1984 of the Customs
G Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. CD (SB) 153/8JB (Order No. 196/84-B).

Harish Salve, Mrs. H. Wahi and Rajiv Shakdhar for the Appellant.

H V.C. Mahajan C.V. Subba Rao and Arun Madan for the Respondents.

The Judgment of the Court was delivered by

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SABYASACHI MUKHARJI, J. This is an appeal under section 130E(b) of the Customs Act, 1962 (hereinafter called 'the Act') which arises from the judgment and order dated 13th March, 1984 passed by the Customs Excise and Gold (Control) Appellate Tribunal (hereinafter called 'the Tribunal'). The appellant imported Colour Scanner Chromagraph C-299 by air on 20.4.1980. The same is allowed to be imported under Appendix 2 of the Import Policy for the year 1981-82 (under the caption "printing machinery" at 12(3) of Appendix 2 of the Import Trade Control Policy for the year 1981-82). The appellant filed the Bill of Entry for clearance under Tariff Item 84.35. The Assistant Collector divided the imported chromograph C-299 under 4 sub-heads in the Bill of Entry and assessed the same under Tariff heading 90.25 (i) and levied customs duty thereon at the rate of 40% plus 5% auxiliary duty plus 8% c.v.d. The appellant cleared the cargo after payment of duty as assessed on 13.5.1980. The Assistant Collector of Customs, thereafter, on 26th July, 1980 sent a Less Charge Demand for a sum of Rs.7,60,032.72 on the ground that Colour Scanner is assessable under the heading 90.10 at the rate of 100% plus 20% plus c.v.d at the rate of 8% as against the original assessment under the heading 90.25 (i) and issued the said notice under Section 28 of the Customs Act to show cause why the amount should not be recovered. In reply forwarded by the appellant on 28.8.1980, it was stated that the imported scanner is used only in printing industry and definitely not used in photography or cinematagraphy laboratories. It never produces copies of any document either by photography or by thermocopying process. The appellant's contention was that this colour scanner being intended to analyse the colour of a composite transparency or colour bromide and finally produce four different positives and negatives on graphic art films and that the colour scanner also analyses any transparency into four basic colours viz., yellow, magenta, black and blue. The appellant further contended that the colour scanner imported was capable of being used as ancillary equipment in the printing industry only. The assessing authorities, however, as mentioned hereinbefore, did not accept this contention and had inserted heading 90.25 (i) of the Customs Tariff Act. The appellant-dealer was contending that the said goods would only be classified either under Entry 84.35. The Tribunal held that the said goods could not be classified under Entry 84.35. The Tribunal found that the classification of the goods by the appellant under Entry 84.35 could not be sustained if the catalogue submitted was analysed which provides as follows:

B C D E F G H

A "We present the new Chromograph 299 for all scanner and process camera operators, and hope to help in snaping the future of your process operations. Let us state at the outset that the Chromograph 299 does not replace the expert operator. But with this modern high-performance "tool" he can more effectively and more economically apply his B know-how to production".

The Tribunal also found in another portion of the catalogue that:

"The Chromograph 299 produce colour separations rapidly and reliably without accessory equipment and without intermediate negatives or colour duplicates. This means C reduced material costs and at the same time increased productivity".

Entry 84.35 refers only to "other printing machinery". The Tribunal was right in holding that the particulars gathered from the D catalogue did not indicate that the machinery in question could be called as one ancillary to printing. It was urged by the appellant before the Tribunal that in trade and industry and in scientific and technological parlance that equipment is used in printing industry only. There is, however, no evidence or clear proof to that effect. As mentioned hereinbefore, the function of the scanner was only to prepare colour E separation sets which might be useful for printing. The Tribunal also considered Entry 19.07 and held that it did not apply in the instant case because it was not a camera; much less a photographic camera. The Tribunal also referred to the contention about Entry 19.25 and on analysis came to the conclusion that the said goods could not be considered such goods as to attract duty under Entry 19.25. The Tribunal F on an analysis was of the opinion that the only possibility left was that of Entry 19.10 under which the goods would attract duty. The Tribunal was of the opinion that if the scanner was an apparatus or equipment used in photographic and cinematographic laboratories then this heading would be appropriate. The Tribunal on an analysis of the evidence found that the scanner produces colour separation rapidly without G intermediate negative or colour duplicates. In that view of the matter the Tribunal was of the opinion that the machinery would come under Entry 19.10. In this connection, the Tribunal also referred to Notification No. 36/81. There, it has been stated that exemption has been granted for import of such machines when used in printing industry. The exemption was also sought on behalf of the appellant under H Notification No. 112/77. However, the Tribunal pointed out that that

notification would be applicable only to machines attracting duty under Entry 84.35. Further, this notification contemplated "process cameras wihin its ambit". It was conceded on behalf of the appellant that the colour scanner imported was not a process camera. In the premises, the Tribunal was of the opinion that it was assessable under Entry 19.10.

The question involved in this matter is as to what is the proper tariff entry under which the goods in question fall and are as such classifiable. There is no specific technical definition as such provided in the Customs Tariff Act or in the notification. If there is no meaning attributed to the expressions used in the particular enacted statute then the items in the customs entries should be judged and analysed on the basis of how these expressions are used in the trade or industry or in the market or, in other words, how these are dealt with by the people who deal in them, provided that there is a market for these types of goods. This principle is well-known as classification on the basis of trade parlance. This is an accepted form of construction. It is well-known principle that if the definition of particular expression is not given, it must be understood in its popular or common sense, viz., in the sense how that expression is used everyday by those who use or deal with those goods. See, in this connection, the observations of this Court in *C.I.T. Andhra Pradesh* v. *M/s. Taj Mahal Hotel, Secunderabad*, [1972] 1 SCR 168. In incorporating items in the statutes like Excise, Customs or Sales-tax whose primary object is to raise revenue and for which to classify diverse products, articles and substance, resort should be had not to the scientific and technical meaning of substance but to their popular meaning, viz., the meaning attached to these expressions by those dealing in them. See the observations in *King* v. *Planter's Company*, [1951] CLR (Ex) 122 and *Two Hundred Chests of Tea*, [1824] 6 L.ed. 128. In the former case, Justice Cameron referred to the reason for the adopting the test of commercial understanding in respect of the tariff items of an Excise Act and observed that the legislature did not suppose our merchants to be naturalists, or geologists, or botanists. These principles were adopted by this Court in *State of West Bengal & Ors.* v. *Washi Ahmed etc.*, [1977] 3 SCR 149. See also *Union of India* v. *Delhi Cloth & Gen. Mills*, [1963] Suppl 1 SCR 586 and *Ramavatar Budhaiprasad* v. *Assistant S.T.O., Akola*, [1962] 1 SCR 279. See also *South Bihar Sugar Mills Ltd.* v. *Union of India*, [1968] 3 SCR 21. This principle was reiterated by this Court by Bhagwati, J., as the learned Chief Justice then was, in *Porritts & Spencer (Asia) Ltd.* v. *State of Haryana*, [1979] 1 SCC 82.

A However, in the instant case, as noticed above, there is no evidence as to how these goods are dealt with in the trade or industry. There is no technical definition of the expressions used. In that view of the matter, in our opinion, the true approach of the Tribunal should have been to find out the correct meaning of the items, i.e., the meaning attributed to the expressions used by those dealing with it in the B trade.

The Tribunal should now find that out. In that view of the matter we allow the appeal, set aside the order of the Tribunal and remand the matter to the Tribunal with the direction to find out how these goods are dealt with by the people who deal in them after giving both C sides due opportunity of adducing evidence and then decide the question according to this Judgment.

The appeal is disposed of accordingly. There will be no order as to costs.

D R.P.D. Appeal allowed.