

COLLECTOR OF CENTRAL EXCISE

v.

M/S FUSEBASE ELTOTO LTD.

JULY 20, 1993

[KULDIP SINGH AND P.B. SAWANT, JJ.]

Central Excise and Salt Act, 1944: Section 4—Notifications No. 68/86 and 160/80—'Projection television sets'—Held, are covered under the description of "Video projectors" in terms of notification No. 160/86 and liable to central excise duty.

The respondent company manufactured projection television sets with sceens of 79" and 119". A projection television set consisted of a "projection unit" and a screen. The projection unit placed at a distance from the screen was capable of receiving television broadcasts and was designed to produce images upto 65 times the size of a conventional television and to accommodate various inputs such as video cassette recorder, personal computer/IBM, Doordarshan signals, video camera, video disc-player etc. These sets cost between Rs.1,20,000 to Rs.1,50,000 each and were sold to video parlours, cinema halls universities, etc. for catering to a large audience.

The respondent claimed that its product was covered under the category of "Broadcast television receiver sets" and was entitled to exemption from central excise duty in terms of notification No.68/86. The Assistant Collector, Central Excise and the Collector, Central Excise (Appeals) rejected the claim on the ground that the product fell under the category of "video projectors" and was subject to central excise duty in terms of notification No.160/86. On further appeal, the Customs, Excise and Gold(Control) Appellate Tribunal decided in favour of the respondent holding that the "projection television sets" were same as "Broadcast television sets". The revenue filed the appeal by special leave.

On the question: whether "Projection Television Sets" manufactured by the respondent are the same as the "Broadcast Television receiver sets" for the purpose of earning exemption under the central excise laws.

Allowing the appeal, this Court

A HELD: 1.1. When the relevant notifications do not contain any definition of the products, the test to be followed is as to how the product called "Broadcast television receiver set" is identified by the class or section of people dealing with or using the product. The identity of an article is associated with its primary function and utility. There is a mental association in the mind of the consumer in respect of certain products keeping in view the utility of the product and also the reputation the name of the product has acquired in the market and among the consumers. [319-D-F]

B 1.2. The projection television sets are capable of receiving television broadcasts as in being done by a "Broadcast television receiver set" but the two are entirely different products and the consumers in this country, as at present, do not identify these two as one and the same product. An ordinary television set has a fixed image in the mind of the consumer in this country. One never visualises a television set having a projection-unit and a head-screen mounted at a long distance. A television set - in the imagination of the consumer - is a compact set with inbuilt screen which adores the drawing room and bed room; whereas the "Projection television set" manufactured by the respondent projects on a screen the video signals transmitted from the television station and received by it. 'Video' is the transmission and reception of a television image; it is a television image or the electric signals corresponding to it and pertains to the picture projection of the televised programme. 'Projector' is a device for projecting a light beam, and apparatus for throwing illuminated image or motion pictures on the screen. [319-H, 320-A-B, D-E]

F 1.3. The Assistant Collector, Central Excise was right in holding that the product of the respondent, i.e. "projection television sets", fully answers the description of "video projectors" in terms of Notification No. 160/86.

[320-C]

G CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3005-3007 of 1991.

From the Order dated 5.3.1990 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. E/2614, 2615 & 2616/89-B, Order No. 34 to 36/90-B1.

H Kailash Vasudev, D.S. Mehra and P. Parmeswaran for the Appellant.

V. Lakshmi Kumaran, A.S. Madan Rajesh Mehta and V. A
Balachandran for the Respondent.

The Judgment of the Court was delivered by

KULDIP SINGH, J. The question for consideration is whether
"Projection Television sets" manufactured by the respondent are the same
as the "Broadcast Television receiver sets" for the purpose of earning
exemption under the central excise laws. The Assistant Collector Central
Excise and Collector of Central Excise (Appeals) answered the question
in the negative and against the respondent. On further appeal by the
respondent, the Customs, Excise & Gold (Control) Appellate Tribunal
(the Tribunal) reversed the findings of the authorities below by its order
dated March 5, 1990 and came to the conclusion that the "Projection
Television Sets" are the same as "Broadcast Television receiver sets" and
as such the respondent was entitled to the exemption claimed. This appeal
by the Central Excise Department through the Collector of Central Excise
Meerut is against the order of the Tribunal.

The projection Television sets manufactured by the respondent-
company are sold under the brand names Hotline Projectavision 203,
Hotline Projectavision 303, Hotline Projectavision 503, Hotline Projec-
tavision 222. A single set consists of a "projection-unit" and a screen.
Different models have screens of different sizes. The screen size for the
model Hotline Projectavision 203 is 200 CM (79"), for Hotline Projectavision
303, the screen size is 300 Cm (119") etc. The projection-unit, which is
placed at a distance from the screen, is designed to produce images upto
65 times the size of a conventional television. These sets are sold to video
parlours, cinema halls, universities and other institutions for catering to a
large audience. According to the respondent the projectavision is designed
to accommodate various inputs such as video cassette recorders, personal
computer/IBM Doordarshan signals, video Camera, Video disc-player and
others.

The excisable goods specified in Notification No.68/86 dated
February 10, 1986 are exempt from payment of Central Excise duty in
terms of the said notification. Serial No.19 in the said notification is as
under:

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|---|------|-------|--|--------------------|
| A | "19. | 85.28 | Broadcast television receiver sets (other than monochrome sets) of screen size exceeding 36 centimeters" | Rupees 900 per set |
|---|------|-------|--|--------------------|

Notification No.160/86 dated March 1, 1986 contains the following

B entry at Serial No.10:

| | | | | |
|--|------|-------|---|--|
| | "10. | 85.28 | (i) television sets in combination with, video recording or reproducing apparatus. (ii) Video monitors and video projectors. | Twenty-five percent <i>ad valorem</i> Twenty five percent <i>ad valorem</i> " |
|--|------|-------|---|--|

The claim of respondent for grant of exemption under Notification No.68/86 was rejected by the Assistant Collector and the Appellate Collector on the ground that the respondent was manufacturing "Video projectors" and as such they were liable to pay central excise duty in terms of the

D Notification No.160/86. In substance the Department's case was that the goods manufactured by the respondent did not come within the category known as "broadcast television receiver sets".

According to the Assistant Collector inbuilt-technology of the projector television receiver set is different than that of a broadcast television receiver set. It was highlighted that the projection set has three cathode rays tubes whereas the ordinary set consists of only one such tube. The cathode - rays tubes used in both types of sets are entirely different in their shape, size and function. The Assistant Collector primarily decided against the respondent company on the ground that the 'projection television set' is not known as 'broadcast television receiver set' in common parlance of the trade. He accepted the contention of the respondent that the projection television is a television receiver in the sense that it receives the video signals and the images of distant events and objects but he rejected the contentions of the respondents on the following reasoning: —

G "But its function is not confined to receiving the images and making them visible on the receiver set itself. It extends to their projection outside the receiver set. A careful reading of the notification No.68/86 would reveal that only a receiver set (as against a projector set) is entitled for concessional rate of duty within the ambit

H of its meaning. There should, therefore, be no doubt that a

television set which functions both as receiver and projector is not covered by the notification No.68/86 as Amended. A

I find that the distinguishing feature between a television receiver set and the so called projection television (being manufactured by M/s. Fusebase and which is the subject matter of present dispute) outlined in the show cause notice relate to facts which have not been disputed by the party. It is beyond dispute that both in terms of function and configuration the so called projection TV is different from a TV as understood in common parlance of trade. It is settled law that for the purpose of levy of Central Excise duty, the most important consideration/factor is how it is known in market and society. Both in terms of price as also in terms of its response to the market/society, the so called projection TV is not considered and known as a television. In so far as this product (projection TV) projects the images received by it on a medium/screen outside - about which there is no doubt and dispute - It is appropriate to call it a Video projector." B C D

The Collector (Appeals) upheld the above quoted findings of the Assistant Collector. The Tribunal did not touch the question as to how the product called "broadcast television receiver set" is identified by the class or section of people dealing with or using the product. That is the test to be followed when the relevant notifications do not contain any definition of the products. The identity of an article is associated with its primary function and utility. The names of certain products have functional association in the mind of the consumers. There is a mental association in the mind of the consumer in respect of certain products keeping in view the utility of the product and also the reputation the name of the product has acquired in the market and among the consumers. "Broadcast television receiver sets" and the "projection television sets" are two entirely different products and the consumers in this country, as at present, do not identify these two as one and the same product. When you go to the market to buy a 'television set' you mean the conventional 'Broadcast Television Receiver set' and the dealer will never understand you to mean the 'Hotline Projector Vision 302 etc.' E F G

We agree with the contention of the learned counsel for the respondent that the Projector Vision-Projection television sets are capable of H

A receiving television broadcasts as is being done by any other broadcast television receiver set but at the same time the two are not the same. An ordinary television set has a fixed image in the mind of the consumer in this country. One never visualises a television set having a projection-unit and a head-screen mounted at a long distance. A television set - in the imagination of the consumer - is a compact set with inbuilt screen which adores the drawing room and bed room. A television set in the market costs about Rs. 15,000 to Rs. 25,000 whereas the respondents product costs between Rs. 1,20,000 to Rs. 1,50,000. We, therefore, agree with the view taken by the Assistant Collector and the Collector.

C We, further, agree with the Assistant Collector that the product of the respondent fully answers the description of "Video Projectors" in terms of the Notification No.160/86. It is not disputed, rather it is the case of the respondent that the "projection television set" manufactured by them receives the televised image. 'Video' is the transmission and reception of a televised image. In other words, its is a television image or the electric signals corresponding to it. It pertains to the picture portion of the televised programme. 'Projector' is a device for projecting a light beam, an apparatus for throwing illuminated images or motion pictures on the screen. The product of the respondent-company projects on a screen the video signals transmitted from the television station and received by it. The
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E Assistant Collector has, thus, rightly reached the conclusion that the product of the respondent answers the description of a 'video projector'.

We, therefore, allow the appeals and set aside the impugned order of the Tribunal dated March 5, 1990. As a consequence we dismiss the appeal of the respondent before the Tribunal. The respondent shall pay the costs of the litigation which we quantify as Rs.11,000.
F

P.R.

Appeal allowed.