

Kinetic Engineering Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-09-1985

Reported in : (1985)(5)LC2489Tri(Delhi)

Appellant : Kinetic Engineering Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The question for decision in this appeal to the Tribunal is whether the appellant's manufacture Luna Mopeds is eligible for exemption from Central Excise duty under Notification No. 52/77, dated 6-4-77.

2. The appellants are manufacturers of Luna Mopeds falling under Tariff Item No. 34-1(1) of the Central Excise Tariff and they have been manufacturing the same since 1972. Earlier they were manufacturing and clearing the Mopeds as two-wheeled motor vehicles at the concessional rate of duty of 10% ad valorem under Notification No. 71/79, dated 1-3-79 and similar earlier notifications. On 6-4-77, under Notifications No. 52/77, dated 6-4-77 issued under Rule 8(1) of the Central Excise Rules, 1944, Government of India exempted 'powered cycle' and 'powered cycle rickshaws' falling under Tariff Item 34 of the Central Excise Tariff from the whole of the duty of excise leviable thereon. The Explanation in the notification clarified what was meant by a powered cycle or a powered cycle rickshaw. For ease of reference, the notification is extracted below : Exemption to powered cycles.-In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, and in supersession of the Notification of the Government of

India in the Ministry of Finance (Deptt. of Revenue and Insurance) No. 102/76-Central Excise, dated the 16th March, 1976, the Central Government hereby exempts powered cycles and powered cycle rickshaws, falling under Item No. 34 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) from the whole of the duty of excise leviable thereon.

Explanation.- The expression 'Powered Cycle' or 'Powered Cycle Rickshaw' means a mechanically propelled cycle or as the case may be mechanically propelled cycle rickshaw, which may also be pedalled, if any necessity arises for so doing.

After issue of the notification, the appellants claim that they approached the Central Board of Excise and Customs for clarification as to whether their product Luna Moped which they claim conformed to the definition of 'powered cycle' as given in the Explanation in the Notification No. 52/77 would be entitled to the exemption under the said notification. The appellants further claim that they did not hear anything in the matter from the Department for a long time. The appellants argue that the long silence of over three years on the part of the Department led confirmation to their belief that Luna Mopeds are exempt by the notification. The appellants claim that their product Luna Moped is nothing but powered cycle fitted with an engine and pedalls, it is mechanically propelled and can also be pedalled when necessity arises for so doing in case it runs out of petrol or the engine goes out of order. The appellants by letter No. KE/EXC, dated 6-6-80 brought their above said contention to the notice of the Assistant Collector of Central Excise, Poona, 3rd Divn., in whose jurisdiction the appellants' factory fell at the relevant time. The appellants submitted that they could not wait indefinitely and that they would be paying excise duty on Luna Mopeds under protest till a revised classification list was filed by them claiming exemption from duty on Luna Mopeds under the notification and till its approval by the Assistant Collector. The appellants, by their letter dated 28-6-83 filed revised classification list with the Asstt. Collector of Central Excise, Poona, 3rd Division, claiming exemption of Luna Mopeds under the notification. The Asstt. Collector of Central Excise by notice dated 6-9-80 called upon the appellants to show cause why the appellants' claim for exemption of Luna Mopeds as powered cycle under Notification No. 52/77,

dated 6-4-77 be not rejected and the product charged to duty of excise at the appropriate rate. The show cause notice sets out the following grounds for the proposed rejection :- (a) Insufficient documentary evidence either scientific (technical) or legal or commercial to call the Moped as 'Powered Cycle'.

(b) In none of the documents produced by the appellants Luna Moped was termed as 'Powered cycle'.

(c) Difference in basic design or 'moped' and the 'powered cycle' as given in Annexure to the Show Cause Notice.

(d) The very purpose of granting exemption from duty was in view of the experimental stage of the product and not reaching a distinct level of profits in the competitive market. Thus, an established product like 'Moped' earning profits may not be entitled to any such exemption from duty, otherwise the Government could have expressly granted such exemption to the same.

The appellants filed reply dated 23-9-80 contending that the product fulfilled the requirement of the Explanation to the notification and several other pleas like Dictionary meaning of Moped, the proposed grounds of rejection were irrelevant and the like were also urged in reply. The Asstt. Collector also afforded an opportunity of hearing to the appellants. By his order dated 7-10-81 the Asstt. Collector of Central Excise, Ahmednagar Division, rejected the appellants' claim for exemption under the notification for the detailed reasons set out in his order. The order was upheld in appeal by Collector of Central Excise (Appeals) Bombay, by his order dated 11-5-83. Aggrieved, appellants filed appeal to the Tribunal.

3. The Asstt. Collector in his order held that the powered cycle in respect of which exemption is granted by the notification is different from Moped. He described the difference between the two. He also held that it is not possible to use the Moped as a bicycle for a long distance, say 50 Kms or above, with only pedalling by human beings, while this is possible with a bicycle. His further reasoning was that in powered cycles engine is attached to an ordinary cycle and that engine is not an integral part of the powered cycle. It can be removed and ordinary cycle can be pedalled for operation. In case of Luna Moped the engine is an integral part of the

vehicle which is exclusively designed and assembled for the purpose. The Horse power of the engine used for powered cycle ranges from 20 to 35 cc whereas 49.7 cc Horse power engine is used for Luna Moped. The Collector of Central Excise (Appeals), however, in his order dated 11-5-83 adopted a slightly different approach for rejecting the appellants' claim. He held that in absence of a definition of a term in the statute, the same being not a scientific term, the trade understanding had to be looked into. He further held that no evidence had been produced by the appellants to show that their product is known as cycle or powered cycle in the trade. He referred to definition of motor assisted bicycle used in Canada's Highway Tariff Act on which appellants relied, but does not seem to have given any finding about this argument. He, however, observed that a powered cycle should not have a gear box and the catalogue produced by the appellants showed that the appellants' product was fitted with a gear box. He held that the product did not satisfy the requirement of a 'powered cycle'.

4. Before us the appellants have filed extracts of the Concise Oxford Dictionary showing meaning of Moped; from Chamber's 20th Century dictionary for meaning of bicycle, cycle and moped; from Words and Phrases, Permanent Edition for meanings of motor cycle and a cycle; of Corpus Juris Secundum for meanings of Vecoliped, bicycle, motor-cycle, motor-bike and motor-scooter; from Words and Phrases Legally Defined Volume 3, 2nd edition, Butterworths for interpretation of the phrase 'mechanically propelled vehicle' ; from Strouds Judicial Dictionary, 4th Edition, Vol. 3 for the same phrase; from Random House Dictionary of the English language the UN- Abridged Edition for meanings of bicycle, motor-bike, motor-cycle and cycle and from Webster's 3rd New International Dictionary Unabridged, for meanings of motor bicycle, motor-cycle, bicycle and cycle. They have also filed extract of Encyclopaedia Americana explaining the term 'motor-cycle'. A catalogue of Luna Moped bearing title 'Operation, Maintenance and Free Service Luna TFR' has also been filed before us. A leaflet relating to the product has also been filed.

5. Earlier, when arguments were heard it was urged by the appellants that in the organised sector there was no industry where an auxiliary motor may be fitted to a cycle so as to call or make it a powered cycle. The Bench then felt that for coining to a proper finding in the case it was necessary that parties should adduce some

more material regarding trade understanding of the product and also as to the point whether apart from Mopeds there was any other industry to which the notification could be relatable if it was held not to apply to the appellants' product or to similar products. The appellants then produced letter dated 8-3-85 from Association of Indian Automobile Manufacturers addressed to the appellants. This letter inter alia states that in an organised sector large or medium, there is no one producing a powered cycle. The statistics available with the Association do not provide any information about the powered cycle industry if at all they are in the small scale sector in the country.

The letter goes on to say that to the best of the Association's knowledge there is no organised industry manufacturing powered cycles, i.e. engine fitted on cycle. The letter adds that in the Automobile industry powered cycle, auto-cycle and mopeds are synonymous words and the vehicles can be pedalled, if required. United Commercial Corporation in their brief letter dated 26-2-85 addressed to the appellants state that in their trade auto-cycle, powered cycle and mopeds are all synonymous. All these vehicles are powered by an internal combustion engine and the vehicle can be pedalled, if necessary. Shanti Trading Co. in their letter dated 7-3-85 addressed to the appellants pactly say what United Commercial Corporation has said. Similarly, is a letter dated 27-2-85 from S. D. Enterprises to the appellants. To the same effect is letter dated 6-3-85 from Nav Yug Motors to the appellants. Dilipe Automobiles, in their brief letter dated 2-3-85 state that in the Automobile trade, auto-cycle, powered cycle and mopeds are in the same category. Similarly, is the letter dated 27-2-85 of Central Automobiles to the appellants. The Madras Motors Ltd. in their letter dated 28-12-84 state that they are not manufacturing any powered cycles. The letter dated 12-1-85 of Mary Cycle Trading Co., Madras addressed to Mr. T.V. Radhakrishnan, Poona (presumably an employee of the appellants because the letter has been produced by them), however, reads differently. The letter states that the authors are not manufacturing two-wheeled powered cycle but "we use to supply powered two-wheeler cycle. We will buy Hercules Cycle or any cycle required by the party, for that cycle we fit Rallis cycle engine and supply to the party". The letter also goes on to say that if the party is interested the author be made known the number of cycles required and quotes the rates for Hercules Cycle and Rallis Rickshaw engine.

6. On behalf of the Respondents a number of documents like extracts from Encyclopaedia Britannica, Webster's 3rd New International Dictionary, Finance Minister's speech and the like have been filed.

Where necessary they would be referred to specifically. In particular, the Respondents have filed pamphlet of Enfield Sales Ltd., Madras bearing title 'Enfield V-34 Cycle- Power Kit costs only Rs. 1350'. The leaflet shows that to an ordinary bicycle a motor is fitted. There are two leaflets from Ralli India Ltd. advertising Ralli Engine RT 35 for motorising a bicycle. From Kirloskar Kisan Equipment Ltd. we have another Kirloskar Gatiman 35 Engine. The leaflet says that it is a petrol engine for the bicycle. There are three more leaflets from Kirloskar Kisan Advertising petrol engine for cycle rickshaw, Kirloskar KP 32 petrol engine (This could be used not only in cycle rickshaw but in several other machines like Lawn mover, vibrator etc). Instruction manual and spare-parts for Kirloskar KP 35 petrol engine. From Ramant Exports Pvt Ltd., Madras we have a leaflet Introduce 34 Fitted auto-bicycle. From the pamphlet it would be seen that such cycle with engine would cost Rs. 1945. At the foot we have the following : 'You will agree the auto-cycle matches moped benefits in every way except equal its high price. So try out suggestion. Consider the V-34 fitted cycle. It is the vehicle you should be riding.' From Srivenkateswara Fabricators Pvt. Ltd., Madras we have leaflets about rickshaws and cycles fitted with motors bearing name 'Tiger'. One more pamphlet is from Happy Age Products, Bangalore, Cruiser cycle engine priced at Rs. 1315.20. This is with letter dated 10-9-84 from Collector of Central Excise, Bangalore, addressed to Shri V. Lakshmi Kumaran, S.D.R., CEGAT, West Block No. 2.

7. At the hearing of the appeal Shri A.B. Diwan and Shri A.N. Haksar, Advocates for the appellants, took us through meanings of the words 'motorised bicycle, bicycle, cycle, Moped, motor cycle in various Dictionaries which have already been set out above. They also referred to meaning of the phrases mechanically propelled vehicle as set out in words and Phrases Legally defined and Strouds Judicial Dictionary.

Reference for the purpose was also made to Encyclopaedia Americana wherein motor-cycle is described in detail. Shri Diwan argued that Notification No. 52/77, dated 6-4-77 which granted exemption to powered cycles also contained the definition of powered cycle in the Explanation appended to it. It was therefore, not necessary to go into technical, scientific or commercial meaning of powered cycle. Shri Diwan argued that the intrinsic character of the cycle was mechanical propulsion, as the Explanation used the words mechanically propelled cycle. Added to this, it should be capable of being pedalled in case necessity arose. The appellants' product Luna Moped fulfilled the two conditions stipulated in the Explanation, i.e. it was mechanically propelled cycle and it could also be pedalled if necessity arose for so doing. Therefore, the product was entitled to exemption under the Notification. Had the intention been to grant exemption only to cycles fitted with motor and not the mopeds, the notification would have expressly said so. Shri Diwan further urged that the policy behind the issue of the notification or the intention of the Government in issuing the notification was wholly irrelevant for interpreting the notification. The exemption of the product could not be decided on such considerations. Working of the product with reference to the booklet 'Operation, Maintenance and Free Service' issued by the appellants was also explained. From the booklet it is noticed that the rear wheel can be disconnected from the engine and transmission by pressing knob the vehicle can then be pedalled as a bicycle. It was submitted that the lower authorities had decided the classification on irrelevant considerations. It was also urged that in the organised sector there is no industry producing such powered cycles other than Mopeds to which the exemption could said to apply if it was held not applicable in case of the appellants' product Luna Moped and Like Mopeds. Shri Diwan also made a reference to Board's Letter No. 156/7/82-CX. 4, dated 13-7-83 and argued that in the Conference of the Collectors of Central Excise doubt was felt that definition of powered cycle as set out in the Explanation to the notification was not adequate to clearly exclude Mopeds and auto-cycles from its scope and that it required suitable modification. Shri Diwan urged that in a Taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The appellants' product Luna Moped fell within the plain words of the Explanation appended to the Notification No. 52/77 and therefore, it could not be denied its

benefit by calling in aid any supposed intention of the exempting authority. Shri Diwan in support of his argument strongly relied on the Supreme Court decision in Hemraj Gordhandas v. H.H. Dave, Assistant Collector of C.E. and Customs-1978 E.L.T. (J 8. On behalf of the Respondent Shri V. Lakshmikumaran, S.D.R., stoutly controverted the arguments of the learned Counsel for the Appellants.

He took us through the history preceding the issue of the notification.

He challenged the appellant's contention that there were no manufacturers making cycles with auxiliary motors. He submitted that while in the organised sector there may be no such manufacturers, in the small scale sector there were manufacturers who manufactured low powered petrol engines which were fitted to ordinary cycles or to cycle rickshaws. Tracing the history of the notification, he submitted that by Notification No. 102/76, powered cycle rickshaw which meant a mechanically propelled cycle rickshaw which might also be propelled by pedalling if any necessity arose for so doing was exempted from whole of the duty of excise leviable thereon. Representations from various manufacturers and bodies like Popular Cycle Manufacturing Co. Pvt. Ltd. (Letter dated 11-12-76 at page 29 of the Respondent's paper book), Maratha Chamber of Commerce and Industries (Letter dated 8th Oct., 1976 at p. 30 of the same paper book) were received by Government urging that engine manufacturers had developed a low powered petrol engine which could be fitted on a bicycle. Such engines were already duty paid. These engines were fitted into bicycles either at the engine manufacturers' end or bicycle manufacturers' end or even by the customer who could fit the engine by means of ordinary bolts into any bicycle. The fitment of such engine into bicycles helped in increasing the capability of the rider in the sense that on slopes and steeps he has to put lesser effort and could run the vehicle on a maximum speed of 25 Km per hour. The representations further urge that excise authorities were of the view that assembly of such vehicles attracted the provisions of excise duty and were demanding duty accordingly which the user of bicycle could hardly afford. Request was made for exempting such cycles to which motor engine had been fixed as had already been one earlier in the case of similar cycle rickshaws equipped with motor.

In particular, he referred to Explanatory Memorandum laid in Lok Sabha and Rajya Sabha by the Finance Minister on issue of the notification.

This memorandum refers to Notification No. 102/76-C.E., dated 16-3-76 granting exemption to powered cycle rickshaws and then says that exemption has also been granted to powered cycles because internal combustion engine the presence of which forms major part of the value of such cycle would have already been charged to duty under Item 29 (of the 1st Schedule of the Central Excises and Salt Act 1944) and administratively it would be impossible to collect duty from various persons who may purchase these engines and fix them to their new or old cycles. The Circular dated 14-4-77 of Central Board of Excise and Customs similarly interpreting the notification addressed to Collectors of Central Excise was also referred to by Shri Lakshmikumaran. For the same purpose Shri Lakshmikumaran also referred to the Finance Minister's speech on 1979 Budget (p. 39 of the Paper Book, para 119).

In this speech the Finance Minister inter alia referred to mopeds and stated that this was used by comparatively less affluent people and consumed less fuel, and that it will bear a lower rate of 10% (of duty) as against the existing rate of 13.1%. Shri Lakshmikumaran's argument was that even while Notification No. 52/77, dated 6-4-77 was in force, the Finance Minister referred to reduction of duty on mopeds in his speech. This would clearly show that intention was not to grant exemption to mopeds. Shri Lakshmikumaran argued that mopeds was a well know term and if the intention was to grant exemption to mopeds, the notification would have expressly said so. That having not been done, it should be presumed that intention was not to grant exemption to mopeds but only to cycles fitted with motors. For the same purpose and argument he referred to Notification No. 71/79-C.E., dated 1-3-79 at page 40 of the Paper Book. This notification exempts two-wheeled motor vehicles falling under sub-item I(i) of Item No. 34 of the First Schedule of Central Excises and Salt Act, 1944, of engine capacity not exceeding 75 cc from so much of duty of excise leviable thereon as is in excess of 10%. To explain the same argument he again referred to 1980 Budget speech of the Finance Minister (para 115). He also referred to Notification No. 6/74, dated 18-1-74 and 7/74, dated 18-1-74 dealing with concession in respect of duty of Central

Excise on tyres. These notifications refer to tyres for mopeds and autocycles. Shri Lakshmikumaran argued that as early as in 1974 Government of India was fully aware of mopeds as these notifications show. Therefore, if the intention was to grant exemption to mopeds, Notification No. 52/77, dated 6-4-77 would expressly have said so. Carrying his arguments further, Shri Lakshmikumaran submitted that appellants' product Luna Mopeds is a two-wheeled motor vehicle attracting duty under Item No. 34 of the First Schedule of the Central Excise Act (hereinafter called Schedule). The Revenue had thus discharged the burden of bringing the product under the excise net. It was for the appellants to prove beyond doubt that the product was covered by Exemption Notification No. 52/77.

He further submitted that interpretation of exemption notification has to be done strictly against the person claiming the exemption.

According to him, the notification grants exemption to certain class of two-wheeled motor-vehicles, namely cycles fitted with auxiliary motor.

The notification is not nugatory. Referring to the pamphlets filed by the Department, he submitted that in the tiny sector there are manufacturers manufacturing and selling such products. He argued that appellants' product is not covered by the notification, since it cannot be considered as mechanically propelled cycle. He submitted that the product before the mechanical propulsion is given to it is not a cycle and when mechanical propulsion is withdrawn, it is not a cycle. Cycle mentioned in the Explanation in the Notification read in juxtaposition to cycle rickshaw could only mean a cycle as commonly understood and will not include a moped.

9. While agreeing that debates in Parliament cannot be used for interpreting certain words in a notification or Act, he argued that the speech made by the mover of the Bill in the Parliament can always be looked into for proper interpretation of the words used in a statute.

His further submission was that the executive construction given by the highest authority implementing and administering the notification should be given due weight in interpreting the notification and the same before it is discarded should be

held to be perverted. In his arguments he also referred to Doctrine of Contemporanea Exposition.

Shri Lakshmikumaran in support of his arguments relied on the following decisions :-Ashwini Kumar Ghose and Anr. v. Arbinda Bose and Anr.-AIR 1952 S.C. 369.

2. Deshbandhu Gupta & Co. and Ors v. Delhi Stock Exchange Association Ltd.-AIR 1979 S.C. 1049.K.P. Varghese v. The Income-tax Officer Ernakulam and Anr.-AIR 1981 S.C. 1922.Messrs Acetate & Chemical Co. Ltd. v. Assistant Collector of Central Excise, Mysore-1984 Shreeram Rayons, Kota v. Collector of Customs, Bombay-1983 E.L.T. 187(CEGAT).Bajaj Tempo Ltd. v. Collector of Central Excise, Pune-1984 (17) E.L.T. 205 (CEGAT).

10. In reply, Shri Diwan reiterating his opening arguments, relying on the Supreme Court's decision in M/s. Hemraj Gordhandas case supra submitted that in a taxing statute there is no room for intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax payer is within the plain terms of the exemption, it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. Relying on the same decision he also submitted that the operation of the notification has to be judged not by the object which the rule-making authority had in mind but the words which it has employed to effectuate the legislative intent. He submitted that the words used in the notification covered the appellants' product and, therefore the exemption could not be denied to the appellants.

11. Rival contentions of the parties-that of the appellant that according to the notification mechanical propulsion is the intrinsic character of the cycle and the other of the respondent that mechanical propulsion is not the intrinsic character may be examined first.

Parties agreed that without mechanical propulsion or with mechanical propulsion taken away, the appellants' product Luna Moped would not be vehicle at all or a cycle. If the finding be that mechanical propulsion is not the intrinsic character of Powered Cycle or Mechanically propelled cycle mentioned in the notification, the appellants' product would not merit exemption under the notification.

12. In *Ashwini Kumar Ghose and Anr.*-AIR 1952 S.C. 369 the Supreme Court held "it is one of the settled Rules of construction that to ascertain the legislative intent all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself". The Notification No. 52/77 has been extracted in para 2 at page 2 of the order above. The notification itself is clear that it is in supersession of Notification No. 102/76, dated 16-3- 1976. The exemption, however, granted by Notification No. 102/76 was retained in the superseding Notification No. 52/77. As would be seen, the Notification No. 52/77 grants exemption not only in respect of powered cycles but also powered cycle rickshaws. The Explanation appended to the notification explains the meaning of powered cycle and powered cycle rickshaw. Powered cycle rickshaw, according to the Explanation, means mechanically propelled cycle rickshaw which may also be pedalled if any necessity arises for so doing. Parties agreed that this powered cycle rickshaw referred to in the Explanation would not cover an auto rickshaw and would only cover an ordinary cycle rickshaw to which a motor or a petrol engine has been fitted. It would be seen that in the case of this cycle rickshaw mechanical propulsion is not the intrinsic character of the cycle rickshaw. It cannot be that the words 'mechanically propelled' are interpreted in one way in the case of cycle rickshaw described in the notification and differently in the case of mechanically propelled cycle used in the same Explanation to the notification. Shri Diwan's argument that mechanical propulsion is the intrinsic character of the cycle in view of the foregoing admitted position about the cycle rickshaw cannot be accepted. The notification was not an essay or composition on a cycle or a cycle rickshaw. In common parlance the mode of propulsion is not ordinarily described as in the case of a bus or aeroplane or a train or a car unless its propelling force is part of name of vehicle e.g. motor car and motor cycle. Such description or mention of propelling force or source of energy becomes necessary only when it is an unusual feature like electric train, diesel car. This is borne out by reference to mechanical propulsion in the case of cycle rickshaw in which mechanical propulsion admittedly is not an intrinsic character of the cycle rickshaw. The same interpretation should be applicable in the case of cycle. It is, therefore, held that in the notification mechanical propulsion is not the intrinsic character of the cycle but

it is an unusual feature and, therefore, its specific mention became necessary.

13. We cannot also lose sight of the fact that the notification in the Explanation uses the expression mechanically propelled cycle and mechanically propelled cycle rickshaw. The expressions are used in juxtaposition to another. It is inconceivable that exemption notification would place together two wholly dissimilar goods in juxtaposition to one another. We have already referred to the admitted position and to interpretation of the words 'mechanically propelled' with reference to cycle rickshaw which, parties admitted, would be an ordinary cycle rickshaw. Having regard to this interpretation about mechanically propelled cycle rickshaw, employing the same interpretation the mechanically propelled cycle would have to be held to be an ordinary cycle to which mechanical propulsion as an unusual feature has been supplied.

14. The appellants' product Luna Moped is not a cycle to which mechanical propulsion has been supplied as an added or unusual feature.

As already stated, mechanical propulsion is its intrinsic character and without it, or if the same be taken away, it ceases to be a vehicle or cycle or of any use. Therefore, it would not qualify for exemption under the notification.

15. In spite of the above finding, we consider it necessary to deal with other arguments advanced by the parties. It is well settled that if any term or expression has been defined in an enactment then it must be understood in the sense in which it is defined, but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted. The notification explains powered cycle and powered cycle rickshaw but does not give any definition of cycle or cycle rickshaw. Hence, so far as material for the present case is concerned, cycle would have to be understood in common parlance or commercial parlance. mopeds and cycles in trade are well understood different terms carrying different meanings. It is true that the appellants during the hearing of the appeal obtained certificates from Automobile manufacturers referred to in para 4 supra stating that in automobile industry powered cycle, auto cycle and mopeds are synonymous words, but little weight can be attached to these certificates obtained during course of the hearing.

As already stated, one of the certificates dated 12-1-85 from Mary Cycle Trading Co. would contradict the other certificates given by Automobile manufacturers. The letter from this party which is also produced by the appellants would suggest that powered cycle is a cycle fitted with a motor and is different from auto cycles or mopeds. The evidence produced by the Respondents on this aspect consists of printed leaflets from various manufacturers like Enfield Sales Ltd., Madras referred to in para 6 (supra). These leaflets which are in printed form (and it could be presumed that they must have been printed well before the hearing of the appeal commenced) inspire greater confidence. Ramant Exports Pvt. Ltd., Madras's leaflet referred to in the same para would clearly suggest that mopeds are different from auto cycles. The appellants' product in trade is not understood as a cycle. The notification uses the word 'cycle' and as already pointed out it has to be understood in common or commercial parlance. Appellants' product Luna Moped also on this test is not a cycle and would, therefore, not merit the exemption.

16. Appellants have on record placed the dictionary meanings of the terms bicycle, cycle and moped to which we have referred in para 4 supra. The appellants have, however, urged that as the notification itself gives a complete dictionary of the product in respect of which exemption is granted, recourse to dictionary or technical meanings cannot be had. A detailed discussion about these meanings therefore appears unnecessary. It may, however, be mentioned that according to Encyclopaedia Americana on which appellants rely, Moped is a type of motor cycle and it is nobody's case that the exemption was intended to cover motor cycles. It would, therefore, appear that the appellants' product Luna Moped would not come within the meaning of powered cycle as explained in the Explanation appended to the Notification.

17. The above conclusion also finds support from Explanatory Memorandum to the Notification No. 52/77. This Memorandum after referring to Notification No. 102/76, dated 16-3-76 which was superseded by Notification No. 52/77 explained that the exemption was being granted to powered cycles because the 1C engines the members of which formed major part of the value of such cycles would have already borne duty under Item 29 of the Schedule and administratively it would be impossible to collect duty from various persons who may purchase these engines

and fix them to their new or old cycles. Use of the Explanatory Memorandum which is analogous to the speech of the Finance Minister preceding the notification for interpreting the notification can in view of the pronouncement of the Supreme Court in *K.P. Varghese v. Income-tax Officer* (AIR 1981 S.C. 1922) certainly be made use of. This Explanatory Memorandum would clearly show that exemption was intended to apply only to cycles fitted with motors and not to a product like Mopeds as that of the appellants which is definitely not a cycle because if mechanical propulsion is taken away it ceases to be a vehicle at all and cannot be made any use of.

18. At this stage we may also refer to an argument by the appellants with reference to Board of Excise and Customs letter dated 6-7-82. This letter was referred to by the appellants for the argument that even the Department felt doubt about the notification not excluding mopeds. The letter shows that the Board of Customs examined the matter in consultation with Directorate General of Technical Development and were of the view that auto cycle mopeds will not be eligible for exemption under Notification No. 52/77. Shri V. Lakshmikumar, learned D. R., relying on the Supreme Court decisions in *Deshbandhu Gupta and Co. v. Delhi Stock Exchange* (AIR 1979 S.C. 1049) and *K. P. Varghese case* (AIR 1981 S.C. 1922) argued that rule of construction by a reference to contemporanea expositio is a well established rule for interpreting a statute by a reference to the exposition it has received from contemporary authority and before it is turned down it must be shown to be clearly wrong. He submitted that in view of these decisions the interpretation made by Board of Excise and Customs of the notification could not be overturned unless it was shown to be clearly wrong. As for the appellants argument that because doubt was felt about the notification in the letter, on closely going through the letter we find that while somebody may have entertained a doubt about the applicability of the notification, the letter in fact is not in favour of the appellants or for exemption for the Mopeds, It does not, therefore, help the appellants. As for Shri Lakshmikumar's argument, this letter issued in 1982 with reference to notification dated 6-4-77 after the controversy about the applicability of the notification to mopeds had arisen, cannot be said to be contemporary construction of the notification. The two rulings would, therefore, not be applicable in the case of the construction contained in the letter dated 6-7-82.

We, therefore, do not accept Shri Lakshmikumaran's argument also. We ignore the letter in coming to any finding in the matter.

19. As a result of the discussion aforesaid, we hold that the appellants' product Luna Moped does not qualify for exemption under Notification No. 52/77, dated 6-4-77.

20. In coming to the above finding we have not taken into consideration the horse power of the engine, the distance for which the product could be pedalled or the use of gears in the product. We have, however, upheld the orders passed by the lower authorities on a reasoning slightly different from that adopted by the lower authorities. The appeal fails and is dismissed.

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