

Venus Industries Vs. Chief Controller of Imports and Exports

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Court : Chennai

Decided On : Nov-06-1997

Reported in : 1998(59)ECC259; 1999(105)ELT555(Mad)

Judge : K. Sampath, J.

Acts : [Central Excise Act, 1944](#) - Sections 2

Appeal No. : W.P. No. 15413 of 1988 and W.M.P. Nos. 23095 and 23096 of 1988

Appellant : Venus Industries

Respondent : Chief Controller of Imports and Exports

Advocate for Def. : Shri K. Ilias Ali, Additional Central Government Standing Counsel

Advocate for Pet/Ap. : Shri Thiyagarajan, ;Senior Counsel for Y. Muthuraman and ;M. Muthappan, Advs.

Judgement :

ORDER

1. The writ petition is for the issue of a certiorari to call for the records of the proceedings of the second respondent in No. Engg./114/LJS-80/AM-81/SPS V.2, dated 24-9-1986 and that of the first respondent in Order No. 8-47/CA.86/EP.1/8303, dated 2-11-1988 and quash the same.

2. The affidavit in support of the writ petition states as follows :-

The petitioner is a Small Scale Unit engaged in the manufacture of bicycle component and accessories and exporting the same for several years and they were also getting export incentives such as Cash Compensatory Support (C.C.S.) and REP licences all those years during July/September, 1980 and June/July, 1982 the petitioner exported in bulk quantities bicycle components and accessories such as bicycle gear cases, mudguard, chain wheel, chain adjuster, saddles, side stand, crank pedals, etc. The petitioner also applied to the second respondent for cash compensatory support against the export under Serial Number 9(b) 'Bicycle components and accessories' of the Ministry of Commerce Letter No. 12(1)/79/EAC, dated 10-1-1979. On 9-6-1982 the second respondent wrote to the petitioner to the effect that the cash assistance for Rs. 1,90,005/- was allowed to the petitioner on account of wrong classification of the export product, that bicycle spare parts were not eligible for import replenishment and cash assistance in respect of exports covered by the invoices referred to therein of the total value of Rs. 10,85,708/- that it was proposed therefore to recover the excess cash assistance of Rs. 1,90,055/- (sic) and that the said amount should be remitted in the Central Bank of India. The petitioner sent a reply on 5-7-1982 pointing out that there could not be any variation or distinction between components and parts which were normally used in respect of engineering goods, that the goods exported on various dates were only components to serve as original equipment and not meant for replacement, that the spare parts were only accessories, that the entire shipments were meant for use as original equipment, that the draw-back schedule in Public Notice 50/82-D.B.K., dated 1-6-1982 showed the description as 'components, spare parts and accessories of bicycles, the cash compensatory support under Serial No. 9 of the list of engineering goods, that the R.I.T.C. code mentioned as 785-39/D.T.N. 87-12 in the shopping bills referred only to parts of bicycles, that in respect of the bicycle parts exported by the petitioner no warranty or performance guarantee was given, that the exports had been done under normal GR-1 formalities and the proceeds repatriated through Foreign Exchange Bank, and that export benefits were enjoyed from 1961 onwards and hence the same should not be denied by a letter dated 11-7-1982 the petitioner wrote to the first respondent informing him that

parts and components of bicycles were styled as 'spares' and the same did not convey the meaning of the spare parts intended for replacement during the currency of warranty or guarantee performance and that the exports were eligible for the benefits referred to above.

When the claim regarding cash compensatory was under issue, Government of India, Ministry of Commerce, by letter dated 27-11-1980 reviewed the procedure for classification of items for grant of cash compensatory support as follows :

Copy

No. 12(59)/79-EAC

Government of India

Ministry of Commerce

(Department of Commerce)

New Delhi,

27th November, 1980

1. All export Promotion Councils

2. All Commodity Boards

3. Jute Commissioner

4. Marine Products Export Development Authority

Sub. : Revised rates of Cash Compensatory Support effective from 1st April, 1979
- Procedure regarding classification of items.

Sir,

I am directed to refer to this Ministry's letter of even number dated the 30th May, 1979 on the above subject and to say that the procedure for classification of items for the purpose of grant of cash compensatory support, as outlined in the letter

referred to above, has been reviewed. It has now been decided that the Regional Classification Committees working in the licensing offices under the CCI & E would also be empowered to deal with classification of items for purpose of grant of cash compensatory support as per revised rates. The decision taken by these Committees would, however, be forwarded to the Ministry of Commerce for ratification by the Headquarters classification Committee.

Yours faithfully,

Sd/

(C. B. Kukreti)

Joint Director.

1. Copy forwarded to all concerned as usual.

2. Copy also forwarded to :

(i) Chief Controller of Imports and Exports, New Delhi.

(ii) All Licensing Offices under the CCI & E,

It is clarified that the decisions relating to classification of items for the purpose of cash compensatory support taken by the Regional Classification Committees, as well as these circulated by this Ministry on the basis of the decisions taken by the Head Quarters Classification Committee or Cash Assistance Review Committee would apply, whether at original or appeal stage, to cases considered and decided 'after the date of the decision.'

The words 'after the date of the decision' in the letter dated 27-11-1980 were subsequently substituted by the words 'on or after the date of issue of the order' by corrigendum dated 8-12-1980. It was further represented to the Ministry of Commerce that the circular dated 20-6-1983 had amended the entry under Column-2 against Sl. No. 9 of cash compensatory support as 'bicycle complete (all types), cycle rickshaws (all types) and their components accessories and spare parts', that the amendment was the result of persistent representation made by the

petitioner firm, that the firm should be given the benefit and that the same was in accord with instructions issued by the Ministry of Commerce in Circular No. 12(59)/79-EAC, dated 27-11-1980 as amended by circular dated 8-12-1980.

In fact, in the matter of cash compensatory support on export of Vacuum Flask refills, though the revised classification was operative from 30-6-1986, on a representation made by the Trade regarding eligibility of cash compensatory support for export made between 17-12-1984 and 7-2-1986, the Government of India directed the same to be decided in the light of the endorsement No. 12/59/79-EAC, dated 27-11-1980 as amended by the corrigendum dated 8-12-1980.

In spite of the several representations made by the petitioner firm, the second respondent by order dated 24-9-1986 informed the petitioner that bicycles spares exported prior to 20-6-1983 were not eligible for cash compensatory support, that the cash compensatory support granted for the earlier period was done erroneously and the same must be refunded. The second respondent also withheld the cash compensatory support due on the exports made during June-July 1982.

Against the order dated 24-9-1986 of the second respondent, the petitioner filed an appeal before the Chief Controller of Imports and Exports, New Delhi, and by order dated 2-11-1988 the appeal was rejected. Aggrieved thereby the present writ petition has been filed.

3. A counter has been filed on behalf of the respondents contending inter alia as follows :-

Cash compensatory support was granted to the petitioner on a wrong interpretation of the C.C.S. Schedule and hence the amount was sought to be recovered. The Export Shipping Bill of the goods described the goods as spare parts and as the policy did not provide for grant of C.C.S. for export of bicycle spare parts, the petitioner was not eligible for C.C.S. The reliance by the petitioner on the drawback schedule and claiming C.C.S. for spare parts was not correct and was not in accordance with the policy. The drawback schedule was not the

document on which the payment of C.C.S. was decided. The fact that 'spare parts' was subsequently included as eligible for C.C.S. clearly showed that 'spare parts' could be clearly distinguished from components. The petitioner itself had described that the goods were spare parts in the Export Shipping Bill. The C.C.S. was payable only on the basis of the policy in force at the time of export. At the time of export the relevant entry in the C.C.S. compendium read as 'bicycle complete (all types) and bicycle components/accessories.' Subsequently, this entry was amended to include spare parts. The amendment would not have any retrospective effect. The amendment was not made on the representation of the writ petitioner. The exports made prior to the amendment could not have the benefit of cash compensatory support. The orders passed by the first and the second respondents were perfectly valid and in accordance with the policy in force at the time of export.

4. Mr. R. Thiyagarajan, learned Senior Counsel for the Petitioner, submitted as follows :- Bicycle spare parts had been made in large quantities and that by itself would indicate that they were not exported for replacement and that they satisfied the definition of components and accessories entitling the petitioner to the benefits of cash compensatory support, though the shipping bills and invoices described the items as bicycle spare parts in Commerce parlance, those items exported would certainly fall under the category of bicycle components and accessories and not mere spare parts. When export was made in such large numbers, the term 'spare parts' was to be treated as synonymous with components and accessories. The authorities had earlier treated such exports in bulk quantities as being entitled to cash compensatory support. That is how they had understood the term 'spare parts'. The authorities ought to have taken into account the individual items of exports detailed in every shipping bill alone. When the matter regarding entitlement to the benefits of cash compensatory support was pending with the Joint Chief Controller of Imports and Exports, Madras, the amendment of the classification came into existence, with the result that spare parts along with components and accessories were specifically made eligible for the entitlement. It was specifically clarified that the decisions relating to classification of items for purposes of cash compensatory support taken by the Regional Classification Committee as well as those circulated by the Ministry on the basis of the decision

taken by the Headquarters Classification Committee or Cash Assistance Review Committee would apply whether at the original or appeal stage to cases considered and decided on or after the date of issue of the orders. When this clarification came the petitioner's case was pending in appeal before the Joint Chief Controller of Imports and Exports and the Ministry's decision contained in the letter dated 20-6-1983 ought to have been made applicable to the petitioner firm also. The conclusion of the second respondent that the bicycle spare parts exported prior to 20-6-1983 were not eligible for the grant of C.C.S. was also not supported by any reasons. Again, the guidelines given in the Import Trade Control Policy distinguishing between components and spares were only meant for restricting the imports to conserve Foreign Exchange and the same could not be made applicable for exports which earned Foreign Exchange. The first respondent in his order dated in November, 1988 had proceeded on the basis as if the petitioner wanted the letter of the Ministry of Commerce No. 12/42/82/EAC, dated 20-6-1983 to be applied retrospectively, overlooking that the said letter was only making explicit what was already implicit. Again, there had been discrimination in that in respect of Vacuum Flask refills, the policy revision was applied with retrospective effect. The learned Senior Counsel also relied on the decision of the Supreme Court in *M/s. Star Paper Mills Ltd. v. Collector of Central Excise Meerut*, : [1990]185ITR575(SC) .

5. Mr. K. Ilias Ali, learned Additional Central Government Standing Counsel appearing for the respondents, countered the arguments on behalf of the petitioner as follows :-

Merely because the items were exported in bulk did not mean that the goods were not spare parts and should be treated as synonymous with components and accessories. They did not become components merely because they had been made in large numbers. The shipping bills also clearly described the goods as spare parts. The denial of C.C.S. to the petitioner was in accordance with the policy. At the time the petitioner exported the goods, spare parts were not eligible for C.C.S. and the denial of C.C.S. to the petitioner was in order. Circular No. 12(42)/87-EAC, (sic) dated 8-5-1985 clearly directed that amendments enabling spare parts to be eligible for C.C.S. took effect only for exports after 20-6-1983.

The Import Trade Control Policy had a dual function that of restricting the imports and saving foreign exchange as well as promoting exports and therefore earning foreign exchange. The interpretation sought to be given by the petitioner was not correct. It is also not correct to say that the Ministry of Commerce Circular dated 20-6-1983 only made explicit what was already implicit. The amendment could not have retrospective application. There was no violation of Article 14 of the Constitution of India. The petitioner could not compare the C.C.S. provision for Vacuum Flasks with its own case as they were under different heading. The orders passed by the authorities were perfectly in order and no exception could be taken to the same.

6. The point for consideration in the writ petition is whether bicycle components and accessories such as bicycle gear cases, mudguard, chain wheel, chain adjuster, saddles, side stand, crank, pedals, etc. would include spare in respect of exports made prior to the circular dated 20-6-1983.

7. It is the submission of the learned Senior Counsel that the department had right through treated spares to mean accessories and that the circular was only classificatory in nature and the cash compensatory support already granted could not be and should not be sought to be recovered back. He also drew a parallel of the case of the Vacuum Flasks refills where the policy was sought to be applied with retrospective effect. He also pointed out that parts and components of bicycles though styled as spares did not convey the meaning that they were spare parts intended for replacement during the currency of warranty or guarantee performance and that the exports were eligible for the benefits. By letter dated 27-11-1980 the matter had been reviewed and a clarification had been issued to the effect that the decisions taken by the Headquarters Classification Committee would apply whether at original or appeal stage to the cases considered and decided after the date of the decision.

8. It is the submission of Mr. Ilias Ali that the commodity had different identity according to use. The learned Counsel also relied on the following decisions :

1. Vithal Chhagan & Sons v. The State of Gujarat (XVII Sales Tax Cases 96)

2. Commissioner of Sales Tax v. Amar Radio Cabinet Works (XXII Sales Tax Cases 63) and

3. Commissioner of Sales Tax, U.P. v. Sharda Electric Battery Works (43 Sales Tax Cases 371).

9. Dealing with the question whether wrist watch cases with chromosteel back were spare parts of watches within the meaning of Entry 10 of Schedule E to the Bombay Sales Tax Act, 1959, a Bench of Gujarat High Court in the decision *Vithal Chhagan & Sons. v. The State of Gujarat* (XVII Sales Tax Cases 96) held that every part which went in the making of an article and was, therefore, a component part of the article would not necessarily be a spare part of the article and since the watch case was undoubtedly essential for the functioning of a wrist watch as a wrist watch, it should be held to be a spare part of a wrist watch within the meaning of Entry 10 of Schedule E to the Bombay Sales tax Act, 1959.

10. In *Commissioner of Sales Tax v. Amar Radio Cabinet Works* (XXII Sales Tax Cases 63), a Bench of the Bombay High Court observed that,

'the expression 'spare parts' in Entry 65 connoted a part which required replacement in the ordinary course on account of wear and tear, and as an extra item for use in an emergency.'

In that case, the Bench held that radio cabinets did not fall within the expression 'Spare Parts '.

11. Dealing with the case of motor batteries under the U.P. Sales Tax Act, a single judge of the Allahabad High Court held in *Commissioner of Sales Tax, U.P. v. Sharda Electric Battery Works* (43 Sales Tax Cases 371) that they were not spare parts of motor vehicles. The reasoning was that the motor batteries were not normally kept as an extra to replace an existing battery. In fact, keeping an extra battery would be a useless surplusage as in due course of time there would be diminution in its value and it could not be utilised in the case of loss or breakdown of the existing battery.

12. In my view, none of the cases referred to above would apply to the facts of the present case. All those cases dealt with entries made in the Sales Tax Acts in respect of the expression 'spares or spare parts' for purposes of taxing the dealer. In the present case the question is entirely different where for purposes of eligibility to cash compensatory support the expression 'spare parts' would mean accessories and components. The considerations which weigh in the matter of deciding an entry for purposes of sales tax are entirely different from the considerations relevant for purposes of deciding the entire under export promotion circulars, etc.

13. In *M/s. Star Paper Mills Ltd. v. Collector of Central Excise, Meerut* : [1990]185ITR575(SC) , the question arose whether paper core would be constituent part of paper in the manufacture of paper. The word 'manufacture' is defined in Section 2(f) of the Central Excises and Salt Act, 1944. It was held by the Supreme Court after an elaborate research as to what the process of manufacture of paper involved, that paper core fell within the term 'component parts' used in Notification No. 201/79, dated 4-6-1979 as amended by Notification No. 105/82, dated 28-1-1982 insofar as manufacture of paper in rolls was concerned. The present situation is almost similar. Whatever was exported by the petitioner would definitely come within the definition of accessories or component parts. Perhaps for the sake of convenience, they were given a heading 'spare parts' and export of such large quantities of accessories and components, particularly when there was no question of those components being meant for replacement, but they were to serve as original equipment only. It is also to be noted that in respect of bicycle parts exported by the petitioner no warranty or performance guarantee was given. The manufacture of the cycle would not be complete without the component parts and the nomenclature spare parts would not mean that the parts exported were not component parts or accessories. In my considered view, the words 'spares and component parts and accessories' had been interchangeably used to the cleavage or it was sought to be introduced in an attempt to bring about a distinction without any difference. The authorities had all along been aware that the spares in the earlier unamended entry meant and included components and accessories and right through they had understood the term only like that and had also given the benefit of C.C.S. to the petitioner and it was not open to the authorities to resile

from the earlier position. What they meant to do subsequently by introducing an amendment was only by way of clarification and as contended by the learned Senior Counsel to make some thing explicit, which was already implicit.

14. Again, the learned Senior Counsel is well founded in his submission that there was discrimination by the powers that be when they sought to give the benefit of C.C.S. on vacuum flasks refills in the light of endorsement No. 12/59/79/EAC, dated 27-11-1980 and 8-12-1980. In the case of Vacuum Flasks, the benefit was given to pending cases with retrospective effect. Even assuming that the words 'spare parts' as they originally stood did not include accessories and components, the notification dated 27-11-1980 regarding classification of items had made it clear that the decisions relating to classification of items for the purpose of C.C.S. taken by the Regional Classification Committees as well as the ones circulated by the Ministry of Commerce on the basis of the decision taken by the Headquarters Classification Committee or Cash Assistance Review Committee would apply whether at original or appeal stage to cases considered and decided after the date of decision. The words 'after the date of the decision' in the letter dated 27-11-1980 were subsequently substituted by the words 'on or after the date of issue of the order' by corrigendum dated 8-12-1980.

15. In the above circumstances, the submission made on behalf of the writ petitioner has to be upheld. Consequently, the writ petition will stand allowed and the Rule NISI is made absolute. There will, however, be no order as to costs.

16. In view of the disposal of the main writ petition, no orders are necessary in W.M.P. Nos. 23095 and 23096 of 1988.