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KIRLOSKAR OIL ENGINES LTD.

v.

UNION OF INDIA AND ORS.

MAY 9, 1995

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[R.M. SAHAI AND S.C. SEN, JJ.]

*Central Excises and Salt Act, 1944 : First Schedule Item 34- A.*

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*Excise Duty—‘Thrust washers’, ‘Thrust half washers’ and ‘Wrapped bushes’—Exclusive use in motor vehicles—Clearance of goods under Notification providing exemption—Meeting between Excise Board and Trade Representative—Decision to classify the goods as ‘thin walled bearings’ if they meet ISI specification—Absence of material to supports decision—Issue of trade notice and levy of duty on goods cleared—Held not proper—Matter remitted to High Court for redetermination.*

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The appellant-Company was manufacturing bushes and washers which were exclusively used in motor vehicles. It cleared these goods under notification No. 99 of 1971 without payment of excise duty from 1971 onwards. The said notification provided that motor vehicles parts and accessories falling under Item No. 34-A of the First Schedule to the Central Excises and Salt Act, 1944 were exempted from payment of excise duty except the items mentioned in the said notification. However, in a meeting held in 1978 between the Central Excise and Tariff Board and representatives of the Trade it was decided that washers and bushes manufactured by the appellant were bimetal bearings and that they could

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be classified as ‘thin walled bearing’ if they satisfied the specifications as provided in Indian Standard 4774-1968. Accordingly, a trade notice was issued and acting on it the Superintendent of Central Excise issued a letter demanding Rs. 1,79,504,21 from the appellant stating that the goods cleared by the appellant were thin walled bearing liable to excise duty. The

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appellant contested the demand on the ground that ‘wrapped bushes’ and ‘thrust washers’ manufactured by it were articles different from ‘thin walled bearing’ and therefore not excisable from the date of exemption notification. Rejecting the contention the Assistant Collector held that the goods in question were thin walled bearing liable to duty under item No.

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34-A. The Collector affirmed the view of Assistant Collector but did not

record any finding whether the goods satisfied IS: 4774-1968 specification. On further appeal the High Court held that (i) there was no material to determine how the bushes and washers were understood in the trade circle; (ii) ISI specification was irrelevant and could not reflect trade understanding; and (iii) since the function performed by the bushes and washers manufactured by the appellant was the same as those performed by the bearings, they were liable to be treated as thin walled bearings as they were in accordance with the specification given in the ISI schedule. The assessee-Company preferred appeal before this Court.

Allowing the appeal and setting aside the order passed by the High Court, this Court

HELD : 1. A bush and washer manufactured by the appellant could not normally be treated as bearing except when it is understood in technical sense. Before a decision was taken by the Board, there was no material available with the Department which could furnish basis for deciding whether bushes or washers manufactured by the appellant could be classified as bearing much less 'thin walled bearings' within the meaning of notification issued in 1971. Further the entire proceedings were initiated by the Superintendent of Central Excise on the basis of trade notice inviting the appellant to classify these goods as 'thin walled bearings' if they satisfied the specification of 4774. The High Court rightly held that a trade notice is not binding, but it omitted to consider that there was no other material with the Department on which it could assume that the washers and bushes manufactured by the appellant were 'thin walled bearings'. The basis for initiation of proceedings being Indian Standard Booklet it was not proper either for the High Court or for the assessing authorities to ignore it and levy the duty treating these good to be 'thin walled bearing' on assumptions without any material. The High Court's observation that it was undisputed that thrust washes and wrapped bushes were in accordance with specification under IS: 4774-1968 is factually incorrect. [98-H, 99-A-C]

2. Since the High Court and the assessing authorities approached the case with an entirely incorrect perspective their orders cannot be maintained. The matter is remitted to High Court to examine the dimension and specification of these bushes and washers and decide whether

A they can be classified as thin walled bearings. [99-D]

*Jain Engineering Co. v. Collector of Customs, Bombay*, [1988] 1 S.C.R. 220; *Union of India v. Delhi Cloth & General Mills*, [1963] Suppl. 1 SCR 586 and *M/s. Novopan India Ltd., Hyderabad v. Collector of Central Excise and Customs, Hyderabad*, (1994) 4 SCALE 122, referred to.

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*Van Nustrand, Scientific Encyclopedia; McGraw Hill, Encyclopedia of Science & Technology; Encyclopedia Britainca Vol. 2*, referred to.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 225 of 1991.

From the Judgment and Order dated 12.9.90 of the Bombay High Court in W.P. No. 702 of 1982.

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A. Hidayatullah, Sandeep Narain and Narain for the Appellant.

The Judgment of the Court was delivered by

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R.M. SAHAI, J. The principal issue that arises for consideration in this appeal is whether 'thrust washer', 'thrust half washers' and 'wrapped' bushes manufactured by the appellant exclusively for Motor Vehicles could be classified as 'Thin walled-bearings' so as to attract duty under Notification No. 99 issued in 1971. Apart from this another legal question which has cropped up mainly due to the High Court's finding and approach of departmental authorities whether a goods which has a meaning assigned to it with consensus of department and trade could be held to be so even without satisfying the requirements on the premises that the court and quasi-judicial authorities are not bound by it.

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Legally there can be no two opinions that a trade notice issued by the Collector of Excise or even the Central and Excise Tariff Board (in brief 'Board') has no binding authority and the assessing authority can draw its conclusions but the importance of it can be appreciated in this appeal only when facts, in brief, are narrated. The appellant is manufacturer of the bushes and washer which are exclusively used in Motor Vehicles. They are thus parts and accessories and were dutiable under Item 34A which

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read as under :

Item No.	Description of Goods	Rate of Duty
34 A	PARTS AND ACCESSORIES NOT ELSEWHERE SPECIFIED OF MOTOR VEHICLES AND TRACTORS INCLUDING TRAILERS	Twenty per cent ad valorem
Explanation : I	The expression " Motor Vehicles" has the meaning assigned to it in Item No. 34.	
Explanation : II	The expression 'Tractor' shall include agricultural tractors.	

In 1971 Notification No. 99 was issued exempting motor vehicles' accessories and parts except those which are mentioned in the schedule. The notification is reproduced below :

"In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts motor vehicles parts and accessories, falling under Item No. 34A of the First Schedule to the Central Excise and Salt Act, 1944 (1 of 1944), other than those specified in the schedule hereto annexed, from the whole of the duty of excise leviable thereon.

#### THE SCHEDULE

1. Brake linings
2. Clutch facings
3. Engine Valves
4. Gaskets
5. Nozzles and nozzle holders
6. Piston rings
7. Shock absorbers
8. Sparking plugs
9. Thin-Walled bearings
10. Tie rod ends
11. Electric horns".

The effect of this notification was that from the date it was issued every accessory and part of the Motor Vehicles became exempt from payment of any duty except the items mentioned in it. Since the bushes and washers manufactured by the appellant were accessories and parts of motor

A vehicles, it was not liable to pay any duty and consequently the appellant cleared these goods produced in the factory without paying any duty from 1971 onwards. In February, 1978 a meeting was called by the Board in which representatives of the trade participated. Two decisions appear to have been taken by consensus, one that such washer and bushes as were  
 B manufactured by the appellant were bimetal bearings and second, they could be classified as 'Thin-Walled bearing' if they satisfied the specifications as provided in Indian Standard 4774-1968. The consensus arrived at the meeting is extracted below :

C                   "(i) Bushes, bearings and thrust half-washers would fall within the category of bearings;

D                   (ii) the question whether a bearing should be considered as a thin walled bearing should be decided after taking into account the other relevant dimensions as laid down in I.S.I. specification IS: 4774-1968 (it was understood that this had not been further revised).

                  (iii) the question whether a bearing was or was not "bimetallic" or "multi-metallic" would not be relevant for deciding whether it was a "thin walled bearings".

E This led to issuing of trade notice dated 23rd September, 1978 which read as under :

F                   "It is considered that valve rocker arm bushes, axle buses, suspension bushes, steering bushes, thrust washer sintered bushes, and miscellaneous bushes would fall within the category of bearings. However, the relevant-dimensions as laid down in I.S.I. specification IS: 4774-1968 should be taken into account to decide whether a bearing is "thin walled bearing". Whether a bearing is or is not "bimetallic" or "multi-metallic" would not be relevant for deciding whether it is a "think walled bearings".

G                   2. All the Trade Association and Chamber of Commerce and Industries are requested to bring the contents of this Trade Notice to the Notice of their member constituents."

H Acting on this Trade Notice, the Superintendent of Central Excise issued a letter to the appellant which is reproduced below :

"Take notice that on behalf of the Central-Government. I hereby demand payment by you of the sum of Rs. 1,79,504.21 ps. Rs. One lac seventy nine thousand five hundred four and ps. twenty one only. Within ten days from the date hereof. Particulars of demand: As per Tariff Advice No. 44/78 dated 7.8.78 and Poona Central Excise Collectorate Trade Notice No. 168/1978 dated 23.9.78 all the thin walled bearings attract central excise duty provided they are - manufactured to ISI specification I.S. 4774-1968 and are used or have application as M.V. Parts. In view of the above the thin walled bearings is thrust washers and Bushes like valve Rocker Arm Bush etc. cleared from your factory from 7.8.1978 works out as under."

The appellatant denied that the washer and bushes manufactured by it were thin walled bearings. In the note of arguments, it was claimed that wrapped bushes and thrust washers were not thin walled bearing. The relevant portion of the Note of objections is extracted below :

- (a) IS-4774-1968 does not give any specifications for 'bushes';
- (b) IS-4774 gives specifications for
  - (i) Thin walled bearing and
  - (ii) Thrust Half Washers
- (c) IS-4757-1968 specifies dimensions for 'wrapped bushes' and 'thrust washers';
- (d) The bushes manufactured by KOEL for automotive use being formed from strip are wrapped bushes and are in conformity with IS:4757-1968; and
- (e) The Thrust Half Washers and thrust washers manufactured for automotive use are in conformity with IS:4774- 1968 and IS:4757-1968 respectively.

On examination of IS: 4757-1968 and 4757-1968 one can appreciate that "wrapped bushes" and "thrust washers" (half or full) are articles different from 'thin-walled bearing and therefore not ex-cisable from the date of exemption notification'.

A The Assistant Collector did not agree and held that since the goods manufactured by the appellant were thin-walled bearings falling under Item No. 34A, it was liable to pay duty on these goods. The Assistant Collector did not accept the claim of the appellant that only bearing which are manufactured according to the specification mentioned in Table Nos. 2 to 5 of ISI were liable to be classified as thin-walled bearings. In appeal the Collector of Central Excise held :

C "According to this specification, thrust washers is used at one each end of a plain journal bearing in order to take light duty thrust loads, a function performed by a bearing. Therefore, technically it will not be incorrect to call thrust washers including thrust half-washers, which are nothing but one half of a split thrust washer, as bearings. Similarly, a wrapped bush is a bush with a longitudinal split in one place and bush means a bearing liner in the form of a complete tube covering 360 degree. Bearing-liner is a tubular element whose inner surface is the bearing bore. Thus, bushes of the type manufactured by the appellants also are bearings. In case the thrust washers and wrapped bushes have thin-walls having specifications given in I.S. 4774-1968, these will be classifiable as thin-walled bearings and thus liable to pay duty under Tariff Item 34A. It is only when these are not according to those specifications, they would be other than thin-walled bearings. Accordingly, I hold that the impugned goods are thin-walled bearings and must pay duty under Tariff Item 34A."

F The Collector thus did not record any finding whether the goods satisfied IS: 4774-1968 specification. The orders were challenged by the appellant by way of a writ petition. The High Court held that there was no material to determine how the bushes and washers manufactured by the appellant were understood in the trade circle. The High Court was of opinion that ISI specification was irrelevant. It could not reflect trade understanding. It did not agree that there was difference between bearing and bushes. The Court went into merits as well and held that it was not disputed that, 'thrust washers' and 'wrapped bushes' manufactured by the Company are in accordance with specifications under IS: 4774-1968, i.e. in the nominal diameter range 16 to 150 mm. The High Court held that since the function performed by the bushes and washers manufactured by the appellant was

the same as those performed by the bearings, they were liable to be treated as thin-walled bearings they are in accordance with the specification given in the ISI Schedule. The High Court further held that even if it be assumed that two views could be possible on the classification of certain goods, the orders passed by the Collector and Assistant Collector were not liable to interference unless it was found that they were perverse or unreasonable or entirely unsustainable.

Various submission were advanced by Sri Hidayatulla, the learned Senior Counsel appearing for the appellants. He urged that functional test to determine taxability or assessability was rejected by this Court as far back as 1988 in *Jain Engineering co. v. Collector of Customs, Bombay*, [1988] 1 SCR 220, therefore, the High Court gravely erred in rejecting the claim of the appellants only because the bushes and bearings manufactured by the appellants were performing same function as bearings. Reliance was also placed on *Union of India v. Delhi Cloth & General Mills*, [1963] Supp. 1 SCR 586 and it was urged that the specifications by the Indian Standard Institute furnished very strong and indeed incontrovertible evidence and, therefore, the High Court was in complete error in its opinion that the Indian Standard specifications do not reflect trade understanding. The learned counsel challenged the finding recorded by the High Court on merits and urged that the specifications as given by the Indian Standard Institute have not only been understood erroneously, but even applied incorrectly as the Assistant Collector found that the bush and bearing manufactured by the appellants were of dimension of 4775 and the consensus having been arrived at the meeting between the Board and the trade representatives for including those bushes and washers which were of dimension of 4774 the High Court could not have in absence of any other material held that the goods manufactured by the appellants were thin-walled bearings. On the other hand Shri A.K. Ganguly, learned Senior Counsel appearing for the Department urged that it has been held by a Constitution Bench of this Court in *M/s. Novopan India Ltd., Hyderabad v. Collector of Central Excise and Customs, Hyderabad*, (1994) 4 SCALE 122 that the burden was on assessee to prove the exception and in absence of any material brought on record as to how the goods were understood in the trade circle the High Court was justified in dismissing the writ petition.

A bush in normal sense is understood as 'a thin metal sleeve or

A tubular lining serving as a bearing or guide'. In Van Nostrand's Scientific Encyclopedia it is explained as under :

"In mechanical terminology, to bush is to reduce the size of a hole. A bushing is a hollow cylinder used as a renewable line for a bearing or a drill jig".

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Similarly, washer is understood as 'a flat ring or drilled disc of metal used under the head of a bolt or nut to spread the load when tightened'. In McGraw-Hill's *Encyclopedia of Science & Technology* it is explained as, 'a flattened, ring-shaped device used to improve the tightness of a screw fastener'. The use of washer in common parlance is explained in the dictionary as 'for placing beneath a nut or at an axle bearing or joint, to serve as a cushion, to relieve friction etc.'. A bearing is normally understood in mechanical sense to be a 'part that rests on something or on which something rests or in which a pin etc. turns' (*Encyclopedia Britanica* Vol. 2). In normal sense, therefore, a washer has different purpose than bearing.

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Wrapped bushes and thrust washers, however, find a very wide application in engineering industry, particularly automobile industry. In the Forword to the Indian Standard Booklet, published in 1974 it is mentioned that wrapped bushes save both space and weight and trust washers with rapped bushes are intended to take light thrust loads. A bearing on the other hand is generally understood as mentioned in the same Booklet an element of mechanism which allows a force to be transmitted between two relatively moving parts'. A bush and washer manufactured by the appellat

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could not normally be treated as bearing except when it is understood in technical sense. It appears when the Indian Standard Specifications were published and washers and wrapped bushes, thrust washers and thrust half washers were mentioned in the Booklet as goods which are extensively used in automobile industry, the Department invited the trade representatives to discuss the matter, the result of which has been extracted earlier.

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Therefore, before a decision was taken by the Board, there was no material available with the Department which could furnish basis for deciding whether bushes or washers manufactured by the appellat could be classified as bearing much less 'thin walled bearing' within the meaning of notification issued in 1971. Not only that the entire proceedings were initiated by the Superintendent of Central Excise on the basis of trade

notice referred to earlier inviting the appellant to classify these goods as 'thin walled bearings' if they satisfied the specification of 4774. It is true, as held by the High Court and by the authorities that a trade notice is not binding, but what the High Court omitted to consider was that there was no other material with the Department on which it could assume that the washers and bushes manufactures by the appellant were 'thin walled bearings'. The basis for published of proceedings being Indian Standard Booklet published by the Indian Standard Institute, it was not proper either for the High Court or for the assessing authorities to ignore it and levy the duty treating these goods to be 'thin walled bearings' on assumptions without any material. The observation in the Judgment of the High Court that it was undisputed that thrust washer and wrapped bushes were in accordance with specification under IS : 4774-1968 is factually incorrect. The written note of the appellant given before the assessing authority has been extracted. It is obvious that the order was made under misapprehension.

Since the High Court and the assessing authorities approached the case with an entirely incorrect perspective, their orders cannot be maintained. Yet it would be hazardous for this Court to examine the dimension and specification of these bushes and washers and decide whether they can be classified as thin-walled bearings. For the purpose it would be expedient to send the case back to the High Court which may decide it either itself or send it to the Tribunal which has now been constituted. In view of this it is not necessary to decided any other issue.

For these reasons this appeal succeeds and is allowed. The order passed by the High Court is set aside. The matter is remitted back to it to restore the writ petition to its original number, decide the same of transfer it to the tribunal for deciding it in accordance with law.

Parties shall bear their own costs.

T.N.A.

Appeal allowed.