

1971

Present : Alles, J., and Samerawickrame, J.

C. KUNDANMAL and another, Appellants, and THE ATTORNEY-GENERAL, Respondent

S. C. 68/68 (F)—D. C. Colombo, 1798/Z

Customs—Duty leviable on imported magnetic recording tapes—Whether such tapes are electrical goods.

The Principal Collector of Customs imposed an ad valorem duty of 210% on 690 reels of magnetic recording tapes imported by the plaintiffs-appellants. The duty was imposed on the basis that the articles fell under the item "electric lighting accessories and electrical goods not elsewhere specified" in the relevant *Government Gazette*.

Held, that, upon the evidence led in the present case, the magnetic recording tapes were correctly classified as electrical goods and not as "musical instruments".

APPEAL from a judgment of the District Court, Colombo.

C. Ranganathan, Q.C., with *A. Mahendrarajah*, for the plaintiffs-appellants.

Ian Wikramanayake, Crown Counsel, with *P. Tennekoon*, Crown Counsel, for the defendant-respondent.

Cur. adv. vult.

June 25, 1971. ALLES, J.—

The only question that arises for decision in this appeal is whether the learned District Judge arrived at a correct conclusion when he held that the Principal Collector of Customs was justified in imposing an ad valorem duty of 210% on 690 reels of magnetic recording tapes imported by the plaintiffs into the Island on Bill of Entry No. A 1073 (P 5). The basis on which this duty has been imposed is that the tapes in question are goods which fall under the tariff item—

"electric lighting accessories and electric goods and apparatus not elsewhere specified—

(1) Articles which in the opinion of the Principal Collector of Customs are considered to be luxury or fancy articles."

(Vide p. 1981 of *Govt. Gazette* P 2)

The plaintiffs themselves in their Bill of Entry described these tapes as "electrical goods" imported from New York but when the Principal Collector imposed the duty of 210% they paid that duty under protest without prejudice to their rights to recover the excess duty so paid. If the tapes are correctly classified as electrical goods the decision of the Principal Collector that they are to be considered as luxury or fancy articles would be final.

The only witness called at the trial was one Rajanayagam, an Electrical Engineer whose expert knowledge on the mechanism and functions of tapes and tape recorders was not disputed. Rajanayagam stated that a magnetic tape consists of a plastic base of polyester on which is a coating of magnetic material. The tape is wound on a reel which is necessary for the purpose of holding the tape on to the tape recorder. The tape recorder can record as well as play back what has been recorded. In this view magnetic tapes could not be classified within any of the items contained in P 2 and the only possible classification would be to include them under the item

“Musical instruments—

Gramophones, phonographs and radiograms and component parts and accessories”

which only attracted an ad valorem duty of 110%. (Vide p. 1987 of P2.) Rajanayagam agreed that he would not call a tape recorder a musical instrument but he took the view that since a tape recorder can perform the same functions as a gramophone, phonograph and radiogram—the recording and reproducing of sound which has been recorded—the tape recorder may be classified as a musical instrument and the magnetic tape, without which the tape recorder cannot be played, would be a component part or accessory. The Legislature however considered it necessary to classify, separately, gramophone and phonograph records which were subject to a duty of 75%. If, therefore, gramophone and phonograph records are not component parts or accessories of gramophones or phonographs, a magnetic tape cannot be considered a component part or accessory of a tape recorder.

In regard to the classification of “magnetic tapes” as “electrical goods and apparatus not elsewhere specified” the evidence of Rajanayagam is relevant. According to the analysis of his evidence by the trial Judge, Rajanayagam stated that—

“a tape recorder is composed of an electrical motor which is used for the purpose of rotating the tape. The reel or spool which is loaded rotates and the tape winds to an empty spool which also has a microphone for the purposes of recording. In the process of recording, the tape goes from the loaded spool through a magnetic field to the receiving spool. The microphone receives the sound so recorded and the sound passes through a system of valves. Once the recording is done, we have the reverse process of playing back what has been recorded on the tape. There is an amplifier that amplifies what has been recorded, and the sound which has been converted from the magnetic tape into an *electrical form* is then reconverted into sound again for reproducing.”

This evidence is supported by the observations of the learned author of the Encyclopaedia, Britannica (Vol. 21 P 798) where dealing with the process of magnetic tape recording he refers to it as—

“one of the most accurate and convenient methods of storing, and later reproducing, any type of information that can be converted into *electrical signals*. Sounds (e.g., voice and music), electrical data from business machines and metering devices, video signals and the electrical impulses for the automatic control of machinery are examples of the material commonly stored on magnetic tape.”

Magnetic tape recording is referred to by the author as “the idea of *storing electrical information* by means of magnetized particles . . .” I am therefore inclined to agree with the observations of the learned trial Judge that “the basic requirement for operating the tape recorder apparatus is electricity. Electricity is required not only for rotating the spools but also for creating the magnetic field and converting the magnetic energy to sound.” On this basis he has held that the tapes are “electrical apparatus not elsewhere specified”. The tariff contained in the *Gazette P 2* was published in November 1963, at a time when, perhaps, tape recorders were not as popular as they are today. This may be the reason why tape recorders and magnetic tapes have not been separately classified for the purposes of duty.

Since electricity is the basis for operating tape recorders and as the plaintiffs themselves popularly understood these articles as being electrical goods, I would agree with the finding of the learned trial Judge that magnetic tapes are electrical goods and dismiss the appeal with costs.

SAMERAWICKRAME, J.—

The Principal Collector of Customs levied duty on the footing that 690 reels of magnetic recording tapes fall under the item, “electric lighting accessories and electrical goods and apparatus, not elsewhere specified.” For the reasons given in his judgment by Alles, J., I am of the view that the tapes are electrical goods. It was the appellant’s submission that they do not fall under the item set out above because they are elsewhere specified. It was submitted that they fall under the item headed “Musical instruments” which is:—

	<i>Preferential Rate Ad valorem</i>	<i>General Rate Ad valorem</i>
“ Musical instruments—		
Gramophones, phonographs and radiograms, and component parts and accessories ..	100%	110%
Gramophones and phonograph records ..	66%	76%
Other, including automatic pianos and organs and component parts and accessories ..	30%	35% ”

Learned counsel for the respondent submitted that only instruments that were used to create original music were musical instruments and that gramophones, phonographs and radiograms were to be regarded as such instruments in this context only because the provision expressly said that they were. He accordingly contended that a tape recorder was not a musical instrument. He further submitted that a tape recorder was primarily used to record and replay sounds and not music. Learned counsel for the appellant submitted that any instrument that was used either to create music or play recorded music was a musical instrument. I am inclined to agree with this submission. There is substance however in the contention of the learned counsel for the respondent that tape recorders primarily record and play back sounds. The appellant should have led evidence or placed some material before Court to show that tape recorders are designed or used mainly to record and play music. There is no such evidence or material. I should not however be disposed to decide the case on this point alone.

What is in question are not tape recorders but tapes used on them. The contention on behalf of the appellant is that they fell within "other musical instruments their component parts and accessories." Though tapes are used on tape recorders they are separate and distinct and cannot be considered component parts of them. The question therefore is whether they are accessories of tape recorders. I understand accessories to mean such things as spare parts or tools sent with an instrument to ensure efficient performance. Though the first item under musical instruments is, "Gramophones, phonographs and radiograms and component parts and accessories" the second item is, "Gramophone and phonograph records". The draftsman does not appear to have considered Gramophone and phonograph records to be accessories of gramophones and phonographs. On a parity of view, magnetic recording tapes, particularly 690 reels of them imported apart from tape recorders, are not accessories of tape recorders. The witness called for the plaintiff stated, "The tape itself in relation to the tape recorder, I would call a component and not an accessory". His position that it is a component part, as I have indicated earlier, I am unable to accept. I am therefore of the view that on the material placed before the Court the plaintiffs failed to establish their contention that the 690 reels of magnetic recording tapes fall under the item headed "Musical instruments". I agree that the appeal should be dismissed with costs.

Appeal dismissed.