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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-30-1997

Reported in : (1999)(110)ELT581TriDel

Appellant : ind. Laundry and Drycleaning

Respondent : C.C.E.

Advocate for Pet/Ap. : Mr. Bhagirath Dass

Judgement :

1. In this appeal filed by M/s. Industrial Laundry and Dry Cleaning Equipment Co. Pvt. Ltd., the matter relates to the classification of carriage trolleys. The appellants had sought classification of their trolleys under Heading No. 87.16 of the Schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as the Tariff). Heading No.87.16 of the Tariff covered trailers and semi-trailers, other vehicles not mechanically propelled; parts thereof. The Revenue had classified these trolleys under Heading No. 94.03 as items of furniture. Heading No. 94.03 cohered "other furniture and parts thereof". There is no dispute that prior to the introduction of the new Central Excise Tariff effective from 1-3-1986 the trolleys in question were classifiable as items of furniture under Item No. 40 of the erstwhile Central Excise Tariff. The Asstt. Collector of Central Excise, Bombay, who adjudicated the matter observed that in common parlance these trolleys were not understood as vehicles, and that the purpose of these trolleys was akin to food trolley, air-conditioning trolley, dressing trolley, tea trolley, etc., which were all classifiable as articles of furniture. He classified these trolleys under Heading No. 94.03 of the Tariff as

other furniture. The order passed by the adjudicating authority was confirmed by the Collector of Central Excise (Appeals), Bombay.

2. The matter was heard on 12-2-1997 when Shri Naveen Mullick, Advocate appearing for the appellants stated that the matter related to the classification of the trolleys under the new Central Excise Tariff in force from 1-3-1986. He referred to the product description and submitted that the trolleys in question were for carriage of the goods within the industrial establishments, and were not items of furnishing.

He further submitted that these trolleys were not marketed as articles of furniture.

3. In reply, Shri M. Jayaraman, JDR appearing for the Revenue stated that prior to 1-3-1986, the appellants were classifying the trolleys in question as items of steel furniture and that the nature of the goods remained the same and that the goods which were 'items of furniture' before 1-3-1986 could not become 'vehicles' from 1-3-1986. It was his submission that the introduction of the new Central Excise Tariff will not change the nature of the goods.

4. We have carefully considered the matter. The appellants were engaged in the manufacture of different type, design and size of trolleys. The appellants have illustrated their products with sketches as under :- (see the graph) 5. The appellants have sought classification of the trolleys manufactured by them under sub-heading No. 8716.00 of the Tariff, which covered the following :- "Trailers and semi-trailers, other vehicles not mechanically propelled; parts thereof".

According to them, their trolleys were non-mechanically propelled vehicles. The Revenue had classified these trolleys under Heading No.94.03, which covered the following :- The scope and coverage of the goods described as 'other furniture' under Heading No. 94.03 of the Tariff had to be seen with reference to the description of the goods under Heading No. 94.01 and Heading No.94.02. Heading No. 94.01 covered "seats (other than those of Heading No. 94.02) whether or not convertible into beds, and parts thereof".

Heading No. 94.02 covered the following: "Medical, surgical, dental or veterinary furniture (for example, operating tables, examination tables, hospital beds with mechanical fittings, Dentists' chairs); barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements; parts of the foregoing articles." As already mentioned above, the term 'other furniture' in Heading No.94.03 had to be analysed with reference to the coverage under Heading No. 94.01 and Heading No. 94.02. By including medical, surgical, dental and veterinary furniture in Heading No. 94.02 the legislature had made its intention clear that functional, specialised and utility items used by the various professions are not excluded from the coverage of 'furniture'. "While giving a meaning to an item contained in the Schedule of articles, the Court should normally give it a meaning intended by the framers of the Schedule by looking at the various articles mentioned in a particular group. All the items in one group should be considered in a generic sense" (refer Supreme Court's decision in Nagar Mahapalika, Bareilly v. State of U.P.6. Further, before we embark upon the classification of the goods, classified by the appellants as 'vehicles' and classified by the Revenue as 'furniture', we have to remember that both vehicles and the furniture are terms having diverse meanings depending upon the situation and the context. In the present situation, no single criteria could facilitate correct classification of the goods in question. Total effect thereof had to be seen. The appellants had claimed classification of the items in question as vehicles primarily on the ground that they are used for carriage of the goods; but every article which is used for carriage of the goods is not a vehicle. The trolley in question had castors, but so have the suit cases. They carry the goods but everything that carry goods is not a vehicle. They store, hang and keep the clothes - whether the clothes are dirty or washed will not change the character of the items used for storing, hanging, keeping and carrying. The essential character to these items is not given by the castors but by their space, design and functional utility.

The Supreme Court in the case of A. Nagaraju Brothers v. State of Andhra Pradesh "But this only shows that there is no one single universal test in these matters. The several decided cases drive home this truth quite eloquently. It is for this reason probably that the common parlance test or commercial usage test, as it is called, is treated as the more appropriate test, though not the only one. There

may be cases particularly in the case of new products, where this test may not be appropriate. In such cases, other tests like the test of predominance, either by weight or value or on some other basis may have to be applied. It is indeed not possible, nor desirable, to lay down any hard and fast rules of universal application." Thus, in the classification dispute of the present nature no static parameters could do justice to the products in question; their essential character had to be discerned by discriminate faculties. Even the construction and the usage of the items referred to as trolleys had to merge with the total effect that they provide to those who deal with them.

7. Motor vehicle is related to traffic and transport; the term "other vehicles not mechanically propelled" had to be seen in the context of the vehicles classified in other headings of Chapter 87 of the Tariff.

Invalid carriages, baby carriages are vehicles, but the goods under consideration were not constructed as a carriage but as a trolley for storing, hanging and keeping the clothes and for moving the same for short distances not by way of transport, but for dealing with them and for facilitating their use and re-use. Heading No. 87.14 of the Customs Co-operation Council Nomenclature (CCCN) covered "other vehicles (including trailers) not mechanically propelled; and parts thereof".

Heading No. 87.16 of the Tariff covered "trailers and semi-trailers; other vehicles not mechanically propelled; parts thereof". It was explained in the Explanatory Notes to the CCCN that Heading No. 87.14 covered a group of non-mechanically propelled vehicles equipped with one or more wheels and constructed for the transport of passengers or goods. It also included non-mechanical vehicles not fitted with wheels and that the vehicles of this Heading were designed, among others, to be pushed or pulled manually. It was further explained that the hand propelled vehicles included trolleys of various kinds including those specialised for use in particular industries. The essential character for classification under this Heading of the goods in question was that of a vehicle. The question for consideration is whether the trolleys described above are in the nature of vehicles.

8. Vehicle is a means of carrying, conveying or transporting. It is a carriage or conveyance used on land or in space. A carriage, wagon, sled, train, automobile or other conveyance having wheels or runners and used on land is a vehicle. Under Section 2 (28) of the Motor Vehicles Act, 1988 'motor vehicle' or 'vehicle' means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type having less than 4 wheels fitted with engine capacity of not exceeding 25 cubic centimeters. It is clear that everything that transports and carry persons and goods is not a vehicle as commonly understood. The vehicle is associated with the road connotes road worthiness.

9. Under the Scheme of Chapter 87 of the Tariff, vehicles are those of transport type for carrying persons, goods, equipment, etc. The trolleys under consideration had not been given a shape of a vehicle.

They are designed for storing, hanging and keeping the clothes. The functions of sorting, bagging, bundling, etc. had nothing to do with the trolley. These are done before the clothes are kept in or on the trolley. They were not designed as a carriage.

10. The term trolley is a term of wide connotation. Depending upon the context, it had different shades of meaning. The trolleys are of different design, made of different components and are used for various purposes. All trolleys are not vehicles as all trolleys are not items of furniture. According to the Concise Oxford Dictionary, trolley is a small table or stand on wheels or castors for use in serving food, transport light objects, luggage, etc. While the trolley in the nature of a low truck running on rails may be a vehicle, the small table or stand on wheels or castors for use in serving foods, transporting light objects, luggage, etc. are in the nature of furniture. Small carts specially hand carts are also known as trolley. There are trolley cars, trolley buses, trolley coaches, trackless trolley coaches, etc. which are in the nature of vehicles.

11. It is thus seen that every item described as trolley could not be a vehicle or an item of furniture and that all relevant aspects had to be taken into account before classifying the trolley as vehicles or as items of furniture. In the present case, the trolleys in question were not for transport of the goods but for storing, keeping, hanging the clothes, and the movement of the trolleys was for their functional use.

The vehicle is a term of common usage and had to be interpreted in the sense in which it is commonly understood. While a short distant transport vehicle is also a transport vehicle, it had to be seen whether the trolleys in question were basically a transport vehicle.

Under Notification No. 61/86-C.E., dated 10-2-1986 patient trolley, stretcher trolley, anesthic trolley and incubator trolley, classifiable under Heading No. 94.02 or 94.03 were exempted from the whole of the duty. As per understanding of the legislature, they were articles of furniture. In the case of Electronics Ltd. v. Superintendent of Central Excise - 1980 (6) E.L.T. 350 (P&H) trolley type stands for room air-coolers were held to be steel furniture. The Punjab & Haryana High Court at Chandigarh in Paras 5 & 6 of their judgment observed as under :- "5. The word 'furniture' is not defined in the Act and according to Webster's Dictionary. It means the articles of convenience or decoration used to furnish a house, apartment, place of business or other accommodation etc. especially movable articles such as chairs, tables, beds, cabinets, desks, stoves etc. In Corpus Juris Secundum, Volume 37, at page 1412, the word 'furniture' is defined as under :- "A comprehensive term of very broad meaning and general application whose meaning changes so as to take the colour of, or be in accord with, the subject to which it is applied. It has been variously defined as meaning anything which furnishes or equips; a supply of necessary, convenient or ornamental articles, for any business or residence, or with which a residence is supplied, equipment, outfit, supplies, that which fits or equips for use or action, that which fits or supplies a house for use or which furnishes or is added to the interior of a house for use or convenience; that with which anything is fitted, out, furnished, or supplied, that with which anything is furnished or supplied for use, those movables required for use or ornament in a dwelling, a place of business or of assembly; those readily movable articles which would be serviceable generally as household furniture without any

special reference to a particular building. It is not confined in its meaning to such things as are necessaries to a family, but embraces about everything with which a house or anything else is or can be furnished. The term ordinarily relates to movable chattel; personal chattels in the use of a family and applies to all personal chattels which may contribute to the use or convenience of the house-holder or the ornament "of the house". "Furniture" is not generally included by the term "fittings"." 6. It is, therefore, evident that the word 'furniture' means an equipment with which the house or a business premises is equipped for a certain use or facility. If this test is applied to the trolley in dispute, it would certainly be an item of furniture because it is placed in a house for better utility of the air-cooler. The fact that it is provided by the petitioner-company as an accessory to the air-cooler would not make it its essential component because admittedly for the working of the air-cooler, it is not a necessary for a person to purchase a trolley because the air-cooler can be fitted either in a window or place on a wooden stool in any room.

Mr. Bhagirath Dass, learned Counsel for the petitioner for his contention that trollies (sic) would not be covered by the word, "steel furniture" relied on - Jiwan Singh and Anr. v. The Senior Superintendent of Central Excise and Anr., 1971, P.L.R. 1003, and Imperial Surgico Industries, Lucknow, 23 Sales Tax Cases 201. Both these decisions are distinguishable on facts and have no bearing on the present case.

In Jiwan Singh's case (supra) the items in dispute were the seats which were fitted in a vehicle meant for carrying passengers and it was held that the seats so provided do not amount to furniture but form a part and parcel of the vehicle itself and are more in the nature of fixtures than furniture. In Imperial Surgico Industries Lucknow's case (supra), the items in dispute were operation tables, beds including flower beds, bed-side lockers, dressing carriages, instrument tables and self-propelling chairs meant to be used as hospital equipment. As there was no material placed on the record indicating that by reason of the description, design and equipment of the articles, they were liable to be described as furniture, the plea of the State that the said items were taxable as furniture was negatived. Therefore, none of the two cases is of any help to the petitioner and the stand taken by it that the trolley being an accessory to the air-cooler would not be

covered by the word, "steel furniture" has to be negatived.

12. Thus the trolleys (sic) in question were more akin to the furniture than the vehicle.

13. Furniture are movable articles and contents, of houses, rooms, schools, offices, etc. They provide comfort and convenience in our daily life. In the absence of a sufficiently clear indication of any particular commercial or popular meaning attributable to the words 'furniture' and 'other furniture', we may turn to the dictionary to find out its ordinary meaning as distinct from its scientific and technical meaning. The word furniture is defined in the Chambers 20th Century Dictionary meaning as movables either for use or ornament with which a house is equipped", the necessary appliances in some arts; accessories; metal fittings for doors and windows. From this definition, it is clear that the items which are put in the houses or elsewhere, item for use or for ornamentation purposes are called as furniture. In Webster's Dictionary-II Edition, furniture has been defined to mean an article of convenience or decorative used to furnish a house. The word furniture means according to the shorter Oxford English Dictionary to fit-up (an apartment, a house) with all that is requisite including movable furniture. In the cases of Simpson & Co.

Ltd. v. State of Madras - 1969 (23) STC 379, and Chandan Metal Products Pvt. Ltd. v. State of Gujarat - 1969 (23) STC 29, the Madras and Gujarat High Courts respectively laid-down that, all items of convenience, either in the house, in offices or in business places come within the ambit of furniture. The Madras High Court had held a garage stool as a furniture and the Gujarat High Court had held a shelving rack and binstak as furniture. The Kerala High Court in the case of Dy.

Commissioner of Agricultural Income Tax and S.T. Ernakulam v. E.V.Industries, Angamaly -1974 STC 33 at 308 (Kerala) had held that certain hospital equipments though meant for the peculiar needs of a hospital and somewhat peculiar in physical features of height and girth and other attributes, were steel furniture. In common parlance, the expression 'furniture' would thus, include specially designed furniture also. Most furniture made today is designed to be practical, comfortable and easy to maintain. Merely because the furniture is put to a particular use, it

shall not detract from its characteristic of being furniture (refer Madras High Court's decision in the case of State of Tamil Nadu v. Arun Sankar Agencies - 1992 STC 85 at 545 (Madras). In the case of Dunlop India v. U.O.I. -AIR 1972 SC 2551, the Supreme Court had held that even the suitability or end-use of a product would be irrelevant for its classification under a particular Tariff entry unless the entry itself makes reference to use or adaptation of that article. The test that before a commodity can be treated as furniture, it must be shown that it is meant for convenient living in a dwelling house or an office or used for decoration is not determinative of the matter. The test is whether the article is ordinarily so used and can be accepted as such according to the general or popular notion as furniture (refer Allahabad High Court in the case of Commissioner of Sales Tax, U.P., Lucknow v. Dhingra & Co. - 1979 STC 43 at 268 Allahabad). The storage and stacking is also a function of furniture. Moving the item within the given space will not rob it from the character of being an item of furniture.

14. The items under consideration were designed for placing on the floor or ground. They were used for convenient handling of dirty and washed clothings. They were used in hotels or hospitals; but they could as will be used in a large household hostel, banquet hall, etc. They could be useful for display exhibition etc. The way, they were designed they could be used for keeping linens, bed spreads and the like for hanging ironed clothes and storing various belongings and garments.

There is nothing in their shape and design they were in the nature of a vehicle. Between the vehicle and the furniture, the items in question are more akin to the items of furniture than a transport vehicle. Thus, they were correctly classifiable under Heading No. 94.03 of the Tariff.

15. In the case before the Bombay High Court in Materials Handling Engg. Co. v. Superintendent of Central Excise -1980 (6) E.L.T. 231 (Bombay) the matter related to the (1) metal tube trolley, (2) mini trolley, (3) trolley structure and (4) gas trolley. It was not in dispute that these items though described as trolleys were not the ordinary trolleys which were used in household or in a clinic by a Doctor. Those goods were usable only for the purposes of shifting the goods from one place to

another. As we have seen from the illustration of the goods in question, they were not akin to the goods under consideration by the Hon'ble Bombay High Court in the case of Materials Handling Engg. Co. referred to above. In the case of DEL Star Pvt. Ltd. v. CCE, Pune -1994 (71) E.L.T. 638 (Tribunal), the matter related to the tubular trolley, which were used as a mobile base to the milking machine in the dairy industry. They were used for moving the milking machine from cattle to the cattle shed. The Supreme Court in the case of ELPRO International Ltd. v. Jt. Secretary, Govt, of India, Ministry of Finance -1985 (19) E.L.T. 3 (S.C.) were concerned with Item No. 40 of the Old . Central Excise Tariff. In the new Tariff, medical, surgical, dental or vetinary furniture is specifically covered under Heading No. 94.02 of the Tariff. The coverage of "other furniture" in Heading No. 94.03, as already discussed above, had to be seen with reference to the items of furniture included in Heading Nos. 94.01 and 94.02. Under the Central Excise Tariff, the goods had to be classified with reference to the relevant Tariff Entries. The classification under the Tariff description which had undergone a change is no more valid under the changed Tariff description. In the present case, the Tariff description had undergone a change and a judgment rendered in the context of a particular Tariff entry could not be automatically applied in interpreting an altered Tariff entry. Even under the old Central Excise Tariff, Item No. 40 relating to furniture the Supreme Court had held that x-ray protective screen was rightly classifiable as furniture. Further, the goods under consideration were being classified as items of furniture under the erstwhile Central Excise Tariff and the nature and use of the goods had not undergone any change after the introduction of the new Central Excise Tariff based on the Schedule to the Central Excise Tariff Act, 1985. There is no ground for classifying them as "vehicles".

16. In the light of the above discussion, we consider that the various trolleys whose illustration had been given above, were not in the nature of a vehicle and were rightly classifiable under Heading No.94.03 of the Central Excise Tariff. As a result, the appeal is rejected. Ordered accordingly.

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