Collector of Central Excise Vs. Eicher Tractors

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-15-2000

Reported in : (2001)(127)ELT846TriDel

Appellant : Collector of Central Excise

Respondent : Eicher Tractors

Judgement :
1. In this appeal filed by the Revenue, the matter relates to the classification of Plough Lamp - should it be considered as a part of the tractor or should it be considered as an accessory to the tractor.

If considered as a part of the tractor, it enjoyed exemption under Notification No. 239/86-C.E., dated 3-4-1986. If it was considered as an accessory to the tractor, no such exemption was available. The respondents are M/s. Eicher Tractors Ltd. The respondents were bringing Plough Lamp from outside under Chapter 10 Procedure of the Central Excise Rules, 1944, without payment of central excise duty under Notification No. 239/86-C.E., dated 3-4-1986. Under Notification No.239/86-C.E., dated 3-4-1986, parts of motor vehicles and tractors falling under Chapter 45,48, 68, 73, 85 or 87 of the Central Excise Tariff enjoyed exemption from the whole of the duty of excise leviable thereon subject to the following conditions :- (i) it is proved to the satisfaction of an officer not below the rank of an Assistant Collector of Central Excise that the said parts are intended to be used as original equipment parts in the manufacture of - (a) tractors of Power Take-off Horse Power not exceeding 25 and electrically operated two-wheeled and threewheeled motor vehicles falling within Chapter 87 of the said Schedule; or (b) vehicles falling within Chapter 87 of the said Schedule and manufactured in a Central Government Ordnance Factory; and (ii) in respect of such use elsewhere than in the factory of production of the said parts, the procedure set out in Chapter X of the Central Excise Rules, 1944 is followed.

The tractors in which these Plough Lamps were used were eligible for exemption under Notification No. 162/86-C.E., dated 1-3-1986. In the show cause notice dated 31-5-93, it was alleged that exemption under Notification No. 239/86-C.E., dated 3-4-1986 was available only to the parts of the tractors. Plough Lamp was not a part of the tractor, but was an accessory for which the exemption under that Notification was not available. The Dy. Collector of the Central Excise, Faridabad, who adjudicated the matter held that the Plough Lamp was a part of the tractor and thus was eligible for exemption under Notification No.239/86-C.E., dated 3-4-1986. The view taken by the adjudicating authority was confirmed by the Collector of Central Excise (Appeals).

In Appeal, the Revenue had pleaded that a Plough Lamp was provided in the tractor merely to improve its effectiveness while ploughing the fields during the night. It could not be considered as a part of the tractor, as the tractor was complete and usable without the plough lamp. It has been pleaded that the Plough Lamp was not covered under the exemption Notification No. 239/86-C.E., dated 3-4-1986.

2. We have heard on 6-10-2000 Shri S.N. Singh, SDR for the appellants/Revenue and Shri Pramod Banthia, Chartered Accountant for the respondents, M/s. Eicher Tractors Ltd. 3. The issue for our consideration is whether the Plough Lamp is a part or an accessory of the tractor. The tractor in which the Plough Lamp was used, was classifiable under Heading No. 87.01 of the Central Excise Tariff. The Plough Lamp itself was classifiable under sub-heading No. 8512.00 of the Central Excise Tariff. The Plough Lamp was received by the respondents under the provisions of Chapter 10 Procedure of the Central Excise Rules, 1944, without payment of central excise duty. It was represented by the respondents before the Central Excise authorities that the Plough Lamp was a part of the tractor and thus,

they were eligible to bring such Plough Lamps to their factory without payment of any central excise duty for use in the manufacture of tractors, which themselves were exempted from the payment of central excise duty.

4. Under Chapter Note 2 of Chapter 87 of the Central Excise Tariff, 'tractors' for the purposes of that chapter meant vehicles constructed essentially for hauling or pushing another vehicle, appliance or load, whether or not they contain subsidiary provision for the transport in connection with the main use of the tractor, of tools, seeds, fertilizers or other goods. It was explained in that Chapter Note that the machines and working tools designed for fitting to the tractors of Heading No. 87.01 as inter-changeable equipment remained classified in their respective headings even if presented with the tractor and whether or not mounted on it.

It is explained in the Harmonised Commodity Description and Coding System (HSN) Explanatory Notes at page 1425 that agricultural machines designed for fitting to tractors as inter-changeable equipment (ploughs, harrows, hoes, etc.) remain classified in their respective headings even if mounted on the tractor at the time of presentation.

In common parlance, the tractor is the one which merely pulls another item of machinery [refer Madras High Court decision in General Marketing and Manufacturing Co. Ltd. v. State of Tamil Nadu - 1980 (45) STC 96 (Madras) at page 98].

For this use of the tractor, for drawing or pulling agricultural, construction implements etc. the Plough Lamp could not be considered as a part of the tractor.

5. The Plough Lamp were separately classifiable under Heading No. 85.12 of the Central Excise Tariff. Heading No. 85.12 among other items covered electrical lighting equipment used for motor vehicles. The Plough Lamp was neither in the nature of headlights or backlights. They were mounted separately for facility of use of the tractor in the night for ploughing of the fields. For its normal functioning as a tractor, there was no need for use of such a plough lamp.

6. The main issue for consideration is whether the Plough Lamp is a part of the tractor or is an accessory to the tractor. We can do no better than to extract paras 6 and 7 from the Kerala High Court decision in the case of Dy. Commissioner of Agricultural Income-tax and Sales Tax (Law), Board of Revenue (Taxes) Ernakulam v. Union of India, Madras, "6. Are the batteries parts or accessories of transistors? Are the carbons parts or accessories of cinema projectors Whether a typewriter ribbon is a part of a typewriter was considered by the High Court of Mysore in State of Mysore v. Kores (India) Ltd. The court said : "The mere fact that a machine cannot be used without some other accessory is not by itself decisive of this question. The point to be considered is whether a typewriter is sold commercially with or without such ribbon. It is clear from the facts presented before us that they are being sold in the market without the typewriter ribbons. That being the position, it must follow that the typewriter ribbon is not an essential part of a typewriter so as to attract tax as per entry 18 of the Second Schedule to the Act...." An identical question arose for consideration before the Allahabad High Court in Kores (India) Ltd., Kanpur v. State of U.P. Their Lordships said : "In respect of typewriter ribbons, the question is whether they are to be considered as a part of typewriters or merely accessories. It seems to us that a part of a machine is that which contributes to making the machine a complete article. It is a part of the whole. It is a component which together with other components results in a complete article. We find it difficult to hold that in the absence of a ribbon, a typewriter is not a complete machine. It is all that a typewriter should be, and the addition of a ribbon does not make it any the more a complete machine." It was therefore held that the ribbon was not a part of the typewriter. The question whether the typewriter ribbon, if not a part, would be an accessory of the typewriter was not considered either by the Mysore High Court or the Allahabad High Court. But the question whether printing types are accessories of printing machinery was considered by the Mysore High Court in N.A.V. Naidu v. Commissioner of Commercial Taxes. The court held that printing types could not be classified as accessories to a printing machinery.

Referring to the meaning of the term "accessory" in Webster's New International Dictionary as "an article or device that adds to the convenience of something else, but is not essential as a speedometer on automotive vehicle", their Lordships observed: "The above meaning, in our opinion, is the one that is appropriate in the context of the word 'accessories' occurring in serial No. 20 of the Second Schedule. In order to constitute an accessory to a machinery, the article or device must be one that adds to the convenience or effectiveness of the main machinery, but is not essential. Speedometer in a motor car is an example of an accessory to a motor vehicle. The motor vehicle can be run without a speedometer; but for its convenience, a speedometer is helpful. A printing machinery cannot be worked without printing types. As held by the Tribunal, printing types are essential without which the printing machinery cannot be worked. If printing types are articles which are essential for working the printing machinery, the printing types cannot be considered as something that adds to the convenience or effectiveness of the printing machinery and, therefore, in our opinion, printing types cannot be classed as accessories to the printing machinery." The principle which can be drawn from the above decisions appears to be that a thing is a part of the other only if the other is incomplete without it. A thing is an accessory of the other only if the thing is not essential for the other but only adds to its convenience or effectiveness. Based on this principle the courts held that a typewriter ribbon was not a part of a typewriter as a typewriter was complete without the ribbon. A typewriter could function even without the ribbon when cutting stencils; but whether the ribbon could be treated as an accessory was not, as already stated, considered by the courts. In the case of printing types, the court held that they were not accessories of a printing machine, for the machine could not function without the types. The types were not accessories in the sense of something which merely added to the convenience or effectiveness of the principal thing, namely, the machinery. Although it was not considered by the Mysore High Court whether the printing types were part of the printing machinery, it would appear that, in the light of its decision in State of Mysore v. Kores (India) Ltd., it would have, had the question arisen, held that the printing types were not part of the printing machinery, for the machinery was complete without the types.

7. To restate the principle : A thing is a part of the other, if the other is incomplete without it. A thing is not an accessory of the other, if the other, although complete in itself, cannot function without the thing." 7. The use of the Plough Lamp had been explained by the assessee that during night time when the tractor is used for

ploughing, the Plough Lamp facilitates a clear vision of the extent and type of ploughing done in the field. Undisputedly, the tractor could be used for the purpose aimed without the installing of the plough lamp, and the plough lamp only facilitates the ploughing during night time. The plough lamp could not be compared with the headlights or backlights that are necessary for operation of the vehicles on the roads.

8. Whether any particular fitting or fixture is or is not a part of the goods, which are the subject-matter of assessment, would depend upon the facts and circumstances of each case. The term 'accessory' has been defined differently in different contexts. In Websters' 9th New Collegiate Dictionary, 'accessory' has been defined as 'an object or device not essential in itself but adding to the beauty, convenience or effectiveness of something else'. In Websters' New World Dictionary, it has been defined as equipment usually removable or replaceable for convenience, safety or completeness. It has also been referred to as an adjunct or accompaniment. It has also been mentioned as to mean a part, sub-assembly or assembly that contributes to the effectiveness of a piece of equipment without changing its basic functions [refer Tribunal's decision in the case of Mangalore Chemicals & Fertilisers Limited v. Collector of Customs -1989 (40) E.L.T. 345 (Tribunal). In the case of Collector of Customs v. Jolly Exports Pvt. Ltd. -1990 (45) E.L.T. 612 (Tribunal), the Tribunal in para 7 of their decision had observed that an accessory means something which contributes in a subordination degree to attain a general result or effect.

From the functioning of the plough lamps, it is clear that these were an accessory to the tractors and were not parts of the tractor. The functioning of the tractor was complete without the fixing of the plough lamp.

9. We may refer to the decision of the Bombay High Court in the case of Union of India v. International Tractor Company of India Ltd. -1985 (22) E.L.T. 780 (Bombay-DB) to elucidate that the plough lamp was an accessory and not a part.

The question involved in that case before the Bombay High Court was whether while assessing the value of the tractors manufactured by M/s.

International Tractor Company of India Ltd. for determining the excise duty payable thereon, the value of the hour meters and wheel weights fitted to the tractors before clearance, was includible or not [refer International Tractor Company of India Ltd. v. Union of India -1977 (1) E.L.T. 133 (Bombay)]. The hour meters, which recorded the number of hours, the tractor has been operated, and the wheel weights used in order to increase the stability of the tractor, if it was required to be operated, in certain soil conditions, to reduce slippage, etc., were not considered by the High Court as essential parts of the tractor.

They were not manufactured by M/s. International Tractor Company of India Ltd., but were purchased from the market, as in the present case, the plough lamps were purchased from the market. They were fitted to the tractors when such tractors were removed from the factory premises of the company, as in the present case, the plough lamps were fitted to the tractors before they were cleared from the factory. Such hour meters and wheel weights were found to be accessory and not necessary components of the tractors.

This order of the Division Bench of the Bombay High Court has been cited with approval by the Delhi High Court in the case of Eicher Goodearth Ltd. v. Union of India - Civil Writ Petition -1885 of 1984 dated 19-12-1989. The Tribunal had followed the Delhi High Court decision in the case of Eicher Tractor Ltd. v. Collector of Central Excise -1992 (62) E.L.T. 772 (Tribunal) while taking a view that the roof canopy fitted to the tractors was not an integral part of the tractor.

10. As the tractor is complete without a plough lamp and as admittedly, the plough lamp was only to facilitate ploughing in the night, we consider that it was not a part of the tractor, and was an accessory for convenient use of the tractor for ploughing in the night. As under Notification No. 239/86-C.E., dated 3-4-1986 only parts of tractors were eligible for exemption, in our considered view, the plough lamps were not eligible for the benefit of that exemption notification.

11. The respondents have referred to the Ahmedabad Central Excise Collectorate Trade Notice No. 238/90 dated 3-1-1991 with parallel Madurai Central Excise Collectorate Trade Notice No. 2/91 dated 3-1-1991. It has been contended that when the value of the plough lamp was includible in the value of the tractor, it

cannot be said that the plough lamp was not a part of the tractor. The trade notice as appearing at page T 70 in 1991 (51) E.L.T. is reproduced below :- "Tractors - inclusion of value of certain accessories towards assessable value of the tractor - regarding (Chapter 87).

A doubt has been expressed as to whether value of linkage draw bar, trailer hook and plough lamps fitted with tractors should be taken into account while arriving at the assessable value of the tractors.

2. It has been reported that certain manufacturers are clearing accessories like linkage draw bar, trailer hooks, plough lamps duly fitted with tractors without including the value of such accessories for the purpose of assessment of tractors. It has been further reported that linkage draw bar and towing hooks are optional accessories and the tractor can be used without such accessories.

Therefore, doubts have been expressed as to whether the value of such accessories should be taken into consideration for purposes of arriving at the assessable value of tractors.

3. The matter has been examined and it is observed that the assessable value of the goods has to be arrived at having regard to the form in which they are ready for clearance at the factory gate.

All the accessories are fitted to the tractors at the time of clearance from the factory gate. Therefore, the cost of all these accessories has to be added for the purpose of arriving at the assessable value of the tractors." The plough lamps were considered to be accessory even in this trade notice. Further, the matter related to the inclusion of its value towards the assessable value of the tractor. It was clarified in the above trade notice that the cost of the accessories has to be added for the purpose of arriving at the assessable value of the tractors.

We are not concerned in these proceedings with the determination of assessable value of the tractors. It is however, clear even from this trade notice that the plough lamp was not considered as a part of the tractor but was considered as an accessory to the tractor.

Classfication and valuation are two separate aspects. In the case of Col. Tubes Pvt. Ltd. v. Collector of Central Excise, Indore - 1994 (2) RLT 129 (CEGAT A), the Tribunal had held as under :- "Classification or valuations are two separate aspects of the matter. The classification is to be done keeping in view the Tariff read with the rules of interpretation, Section Notes and Chapter Notes, whereas the value has to be determined in terms of Section 4 of the Central Excises and Salt Act, 1944, read with Central Excise Valuation Rules."Andhra Pradesh Paper Mills Ltd. v. CCE - 1993 (65) E.L.T. 447 (Tribunal), the Tribunal in para 8 of their decision had held as under:- "It has to be observed that Section 4 exclusively deals on principles of valuation and the factors governing valuation need not necessarily govern the aspect of classification, as classification of items are done on the basis of a separate legislation, namely Central Excise Tariff Act, which lays down interpretative rules and Chapter Notes for the purpose of classification." 12. After taking note of the relevant facts into consideration, we do not agree with the view taken by the ld. Collector of Central Excise (Appeals), New Delhi. Accordingly, we set aside both the orders-in-original and order-in-appeal impugned in these proceedings and allow the appeal of the Revenue.