

Collector of Central Excise Vs. Polyset Plastics Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-21-2000

Reported in : (2001)(74)ECC631

Appellant : Collector of Central Excise

Respondent : Polyset Plastics Ltd.

Judgement :

1. The respondents herein are licensed manufacturers of nylon brake gear bushes and brake gear bushes. They filed classification lists under sub-heading 39226.90 (sic) as "other articles of plastic" and claimed exemption from duty in terms of Notification 53/88, dated 1-3-1988. In the remarks column of the classification list the end-use of the products was described as "Support Bogie Brake Gear in Railways". The classification lists were approved finally by the Assistant Collector of Central Excise, extending the benefit of the Notification. Doubts arose about classification of the product on the basis of the end-use and hence the Revenue preferred appeals before the Collector of Central Excise (Appeals), Bombay seeking classification under sub-heading 86.07 without the benefit of any exemption. The lower appellate authority upheld the orders passed by the Assistant Collector, on an interpretation of the Chapter Notes to Chapter 86, Chapter 39 and Section XV and Section XVII of the Central Excise Tariff. Hence this appeal by the Revenue.

2. We have heard Shri J.M. Sharma, learned DR and Shri Nitin Mehta, learned Advocate.

3. The Revenue seeks classification of the disputed item under Heading 86.07 of the CETA, 1985 which covers "parts of railway or tramway locomotives or rolling stock". The Revenue relies upon HSN Explanatory Notes to Heading 86.07 which state that parts of railway or tramway locomotives or rolling stock include parts of brake gear including shoes, cylinders, levers, etc. The Revenue challenges the finding of the lower appellate authority that the bushes are like washers as both are used as a packing i.e. cushion to relieve friction, etc., contending that as per the Dictionary of Scientific and Technical Terms by David Lapeads (1974 Edition), "Bush" means "to line with a bushing as an axle bearing" whereas "gasket-washer" means "a packing made of deformable material usually in the form of sheet or ring used to make a pressure tight joint between stationary parts". It is the submission of the Revenue that in technical application, the bushes are used as anti-friction and these consist of rings of anti-friction or other material (e.g. sintered metal or plastic) and these may be in one piece or in several pieces clamped together and form a smooth bearing in which a "shaft" or "axle" turns, and therefore, bushes and washers have different applications and are not similar items.

4. We find from the Explanatory Notes to Heading 86.07 in the HSN that the Heading 86.07 covers parts of railway or tramway locomotives or rolling stock provided the parts fulfil the following conditions : (i) they must be identifiable as being suitable for use solely or principally with the mentioned vehicles (ii) they must be excluded by the provisions of Notes to Section XVII. Note 2 to Chapter XVII in the HSN stipulates that the expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this Section : (b) Parts of general use, as defined in Note 2 to Section XV, of base metal or similar goods of plastics (1) Brushes of a kind used as parts of vehicles (Heading No. 96.03).

Note 2 to Section XVII of the Central Excise Tariff is identical to Note 2 to Section XVII of the HSN. The lower appellate authority has relied upon Note 2 to Section XVII to exclude the disputed item from the purview of Section 86 by holding that bushes are akin to washers both in shape and in application. McGraw Hill Dictionary of Scientific and Technical Terms defines bushing as a "removable piece of soft metal or graphite-filled sintered metal, usually in the form of a

bearing, that lines a support for a shaft" (page 224). The same dictionary defines washer as "a flattened; ring-shaped device used to improve the tightness of a screw fastener" (page 1733). The Concise Oxford Dictionary, 8th Edition defines bush as "a metal lining for a round hole enclosing a revolving shaft, etc." (page 151) and a washer has been defined in the same dictionary at page 1385 as "a flat ring of rubber, metal, leather, etc. inserted at a joint to tighten it and prevent leakage. The respondents have explained that bushes manufactured by them are used for the purpose of avoiding wear and tear to the main body due to friction and their contention is supported by a certificate issued by the Ministry of Railways to M/s. Synthetic Moulders Ltd. who are manufacturers of the brake gear bushes (which the Dept. has not disputed as being identical to the brake gear bushes manufactured by the respondents herein) certifying that the bushes are provided between the steel housing and steel pins of the brake rigging and provide a lining of non-metallic surface as washers and are used in the brake gear to improve the life and reduce the maintenance. Since the respondents have been able to establish that the bushes in dispute have similar application as washers, Note 2 (a) of Section XVII of the CET is attracted and hence they are excluded from the coverage of Chapter 86 and fall for classification under Chapter 39 as their constituent material is plastics. We also note that several classification lists filed by the respondents claiming classification under Chapter 39 have been approved and this reflects the view of the Department which has been subsequently confirmed by the Collector of Central Excise (Appeals) Bombay vide his order dated 13-9-1990 in respect of classification list Nos. 143/89, 147/89, 148/89, 149/89, 153/89 and 163/89 filed by the first respondent herein and Nos. 140/89, 144/89 and 146/89 filed by the second respondent herein.

5. In the light of the above discussion, we hold that the brake gear bushes manufactured by the respondents herein, according to the Railways specifications and supplied to the Indian Railways fall for classification under Heading 3926.90 as other articles of plastic.

Their eligibility to exemption in terms of Notification 53/88, dated 1-3-1988 (which is available for certain products falling under Chapter 39 subject to certain conditions), which has been allowed by the Collector (Appeals), is not disputed by

the Department and hence, we are not called upon to give any finding on this aspect. In the result, we uphold the impugned order and reject the appeal. The cross-objections filed by the respondents are disposed of in the above terms.

6. With due respects to Hon'ble Member (J), my views and orders in the matter are as follows: 7. The basic issue involved in this case is classification of bushes made of nylon and used in brake gears designed for use in railways and the applicability or otherwise of Notification No. 53/88.

8. In this connection, I find that there is a lot of force in the arguments of the department that the item is not hit by Section Note 2 of Section XVII. This section note excludes only those parts and accessories which are either specified therein or are parts of general use as defined in Note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39) and I find that bushes are neither specified under any of the clauses from (a) to (1) under this section note nor can be considered as parts of general use of the type defined in Section Note (2) of Section XV.9. The respondents have argued that they are akin to washers and therefore, hit by Section Note 2(a) of Section XVII.10. This clause of Section Note (2) (of Section XVII) includes washers but, does not cover bushes. Nothing prevented the legislature to either include bushes here or in Note (2) to Section XV.11. Furthermore, bushes are neither technically identical or similar to washers nor in the commerce and trade, they are looked upon as the same or similar items. This is evident from the fact that nobody will give you wash. a you ask for bushes and vice versa. Function and use wise, one of the main function of bushes is to reduce friction and give support (whereas one of the principal use of washers is to tighten joints and prevent leakage). Hence, the point for our consideration is as to whether such bushes which have been specifically designed for use in the braking system of the railways can be considered as parts suitable for use solely or principally with the railway rolling stock.

It is significant that in HSN, after Heading 8607.19, there is a single dash sub-heading mentioning "brakes and parts thereof"; And, once they are identifiable as such, it is immaterial of what material they are made up of.

12. Again, once they are found to be classifiable under a specific chapter heading on the basis of their function and use (and the material of which made is immaterial), they get excluded from Chapter 39 itself nothing to talk of Heading 39.26 which is even otherwise a residuary entry.

13. If anything, they are more akin to anti-friction bearings (and not washers) because of their anti-friction and/or supportive role.

14. In fact, bushes or bushings can be considered as a type of bearings and the term 'bush-bearing' is in common use. The 'McGraw Hill Dictionary of Scientific and Technical Terms - Second Edition' refers to 'bushing' as follows :- "Bushing. A removable piece of soft metal or graphite - filled sintered metal, usually in the form of a bearing, that lines a support for a shaft." 15. The 'Marks' Standard Handbook for Mechanical Engineers' by 'Baumeister Avallone Baumeister' Eighth Edition also, a page 8-126, under the heading 'Elements of Journal Bearings' shows typical dimensions of solid and split bronze bushings and mentions, inter alia, as under :- "Bronze bushings made from hard-drawn sheets and rolled into cylindrical shape are made with a wall thickness of only 1/32 in for bearings up to 1/2 in diam and with a wall thickness of 1/16 in for bearings from 1 in diam up. The wall thickness of these bearings depends chiefly upon the strength of the material which supports them. Bushings of this type are pressed into place, and the bearing surface is finished by burnishing with a slightly tapered bar to a mirror finish." While describing "Graphite-lubricated bearings", it mentions, inter alia, as under :- "Strip bronze with indentations or grooves filled with graphite is used in sheet form or rolled to a butted cylindrical bushing. These bearings are manufactured by Bound Oil-less Bearing Co." 16. Whereas 'washer' is "a flattened, ring-shaped device used to improve the tightness of a screw fastener" according to McGraw Hill Dictionary of Scientific and Technical Terms and some washers may be akin to gaskets but, they are not akin to bushes or bearings, for gasket also ensures that a joint especially between metal surfaces, does not leak liquid or gas.

17. It is true that according to "The Shorter Oxford English Dictionary on Historical Principles; Volume - II", 'washer' is "a perforated annular disc or flattened ring of metal, leather, etc., placed between two surfaces subject to rotative friction, to

relieve friction and prevent lateral motion and unsteadiness" but, it can hardly be denied that the main function of such annular discs or flattened rings of metal, leather or other material is to tighten and prevent leakage.

18. Whenever there are articles which are found in different shapes and sizes and can be used to perform more than one function some of which are common to both of them, it is the principle characteristic or essential feature and the most common use which is adopted as a criterion for distinguishing them. A perusal of the definitions, examples and uses given in various dictionaries and technical literature shows that bushes are more akin to bearings (and not washers) and the two are distinguishable with reference to their main function and common use that of anti-friction and supportive function in the case of bushes and bearings whereas that of tightening and preventing leakage in the case of washers and gaskets.

19. As mentioned earlier, it is also common knowledge that bushes (or bush bearings) are distinct and treated distinctly from washers by the common man and those who normally deal with it in the normal course of trade and industry and the two terms are not used interchangeably.

20. In the HSN and the Central excise tariff also, this distinction is reflected. This is evident from the fact that in HSN, washers are shown as classifiable under different headings on merits depending upon the material, inter alia, of which they are made and their type (and some of the types of gaskets are similarly classifiable under the same heading or sub-heading), whereas the bearings are mostly classifiable under Chapter Heading 84.82 (in various sub-headings) although some are classifiable under 68.15 and 87.08 also. What is even more significant is that in Central Excise Tariff, the washers are included in Chapter 73 and specifically covered under Heading 73.18 and by virtue thereof, are required to be considered as 'parts of general use' [but, as noticed earlier, bushes (and bearings) are not included in this Chapter or Section Note (2) of Section XVII].

21. Furthermore, Note (3) of Section XVII of CET is also required to be simultaneously kept in view. This note reads as under :- "3. Reference in Chapters 86 to 88 to 'parts' or 'accessories' do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those chapters. A part

or accessory which answers to a description in two or more of the headings of those chapters is to be classified under that heading which corresponds to the principal use of that part or accessory." 22. Since in the present case, the article has been specifically designed as per orders of the railways for use solely or principally by the railways in the braking system of their locomotives or rolling stock, hence, they satisfy both the conditions mentioned in the explanatory notes under Heading 86.07 namely - (1) they must be identifiable as being suitable for use solely or principally as part of the railway locomotives and rolling stock, and (2) they are not excluded by the provisions of the Notes to Section XVII i.e. Note (2) read with Note (3) of this Section. Hence, in my opinion, the department was justified in seeking its classification under Heading 86.07. Sesa Goa Limited v. Collector of Customs reported in 1989 (42) E.L.T. 291 (T) also does not help the cause of the respondents as this case deals with the packings, rings, seals, etc., made of plastic material and these are not the type of goods with which we are concerned nor are the uses to which the above items are put, namely packing or sealing, with which we are concerned; And, in any case, classification under Heading 84.64 was not agreed to in that case, although it covered gaskets, on the ground that the item imported was made out of the plastic and not out of materials of the types mentioned in that heading.

24. Before parting, I may mention that a reference has also been made to a letter signed by someone on behalf of Director General (Carriage) to M/s. Synthetic Moulders Ltd. on 16/18-5-1990 regarding manufacture and supply of different sizes of nylon 'bushes' for being used as 'washers'. This is not easily understandable. In my opinion, this letter is of little evidentiary value and does not tilt the scale in favour of the respondents. Apart from the fact that it is a letter from one to another party and does not relate to the products of the respondents in the present case, we cannot rely upon a mere opinion of some third person whose identity is not known. We do not even know whether the person signing the letter is merely an administrative/clerical official or an expert and what is the basis of his opinion or intention. Further, we are governed by the principles of interpretation and the criteria mentioned in the Central Excise Tariff itself and we are concerned here with the question of distinction, if any, between 'bushes' and 'washers' accordingly; and I find that 'bushes' are distinct and distinguishable from 'washers'.

25. In view of the above discussion, I hold that the bushes in question are classifiable under Heading 86.07 and were not entitled to the benefit of Notification 53/88. Hence, the impugned order is required to be set aside and the appeal is required to be accepted. It is ordered accordingly.

In view of the difference of opinion between Hon'ble Member (J) and the Vice President, the matter is submitted to the President for referring it to a Third Member on the following points :- 2. Whether the goods are required to be classified under Heading 86.07 or under 3926.90, and 3. Whether the goods are eligible for the benefit of Notification No. 53/88 or not ?" Sd/- Sd/-(Jyoti Balasundaram) (S.K. Bhatnagar) Member (J) Vice President Dated : 13-4-2000 Dated : 12-4-2000 27. Since there has been difference of opinion in between the then Hon'ble Vice President and the Hon'ble Member (J), the following points are referred to the Third Member to resolve the issue : 2. Whether the goods are required to be classified under Heading 86.07 or under sub-heading 3926.90, and 3. Whether the goods are eligible for the benefit of Notification No. 53/88 or not ?" 28. Arguing for the Revenue Shri S.P. Rao, Id. JDR submitted that bushes are distinct from washers. In this context, he draw my attention to the reasonings given by the Hon'ble Vice President in paras 16 and 17 of the order which are as under : "16. Whereas 'washer' is "a flattened, ring-shaped device used to improve the tightness of a screw fastener" according to McGraw Hill Dictionary of Scientific and Technical Terms and some washers may be akin to gaskets but, they are not akin to bushes or bearings, for gaskets also ensures that a joint especially between metal surfaces, does not leak liquid or gas.

17. It is true that according to "The Shorter Oxford English Dictionary on Historical Principles, Volume - II" 'washer' is "a perforated annular disc or flattened ring of metal, leather, etc., placed between two surfaces subject to rotative friction, to relieve friction and prevent lateral motion and unsteadiness" but, it can hardly be denied that the main function of such annular discs or flattened rings of metal, leather or other material is to tighten and prevent leakage." 29. He submitted that item in Question is not hit by Section Note 2 of Section XVII. This Section note excludes only those parts and accessories which are either specified therein or parts of general use as defined in Note 2 of Section XV of base metal (Section XV)

or similar goods of plastic (Chapter 39). He said that bushes are neither specified under any of the clause from (a) to (i) under this Section note nor can be considered as parts of general use of the type defined in Section Note 2 of Section XV. He said that besides this, this was the view expressed by Vice President in his proposed order as well as in the - Final Order 931/99-B, dated 25-8-1999 in Appeal No. 2485/93-B1 [2000 (115) E.L.T. 441 (T)] in the case of C.C.E., Chandigarh v. Ganga Singh & Sons. He submitted that Note 2 to Chapter 86 mentions only certain parts, which are covered by Heading 86.07 as the word "inter alia" used, is not exhausted. When the item is classified under Heading 86.07, the item as such is not eligible for the benefit of Notification No. 53/88.

30. Shri Nitin Mehta, Id. Advocate appearing for the respondents submitted that he was instructed by his client not to contest the matter on merits since matter is of academic interest. In fact the demand raised has also been dropped by the Commissioner (Appeals) and against that order, no appeal has been filed by the Department and even there is no recurring effect. He fairly concedes that 'bushes' are distinct from washers.

31. The dispute is in respect of classification of 'bushes' made of Nylon and used in break gear designed for use in railways. There is a lot of force in the arguments advanced on behalf of the Department that the item is not hit by Section Note 2 of Section XVII. This Section Note excludes only some parts and 'bushes' are neither specified in any of the clause as it was rightly observed by the Hon'ble Vice President in his order. Both sides concedes that 'bushes' are neither technically identical nor similar to washers. When they were found to be classifiable under specific Chapter Headings on the basis of functions and use, they get excluded from Chapter 39. On going through the technical literature as well as Tariff entries referred to above in the respective orders I find that bushes in question are appropriately classifiable under Heading 86.07 and accordingly not entitled to the benefit of Notification No. 53/88. The view expressed by the Hon'ble Vice President is concurred with. File is returned to the original Bench to pass an order accordingly.

The bushes in question fall for classification under Heading 86.07 of the Schedule to the CETA, 1985 and accordingly are not entitled to the benefit of Notification No. 53/88. Hence the impugned order is set aside and the appeal of the Revenue is allowed.

Sd/- Sd/- (Lajja Ram) (Jyoti Balasundaram) Member (T) Member (J) Dated : 21-12-2000

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