

**Commissioner of C. Ex. and Cus., Pune Vs. Elemec Industries**

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**SooperKanoon Citation :** [sooperkanoon.com/27671](http://sooperkanoon.com/27671)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Feb-22-2002

**Reported in :** (2002)LC125Tri(Mum.)bai

**Judge :** S T Gowri, G Srinivasan

**Appellant :** Commissioner of C. Ex. and Cus., Pune

**Respondent :** Elemec Industries

**Judgement :**

1. The question for consideration in this appeal is the classification of the connecting rod and the crank-case manufactured by the respondent. In the classification list that it filed, in respect of these goods, it classified both of them under Heading 84.83 of the Tariff. Following issue of notice, the Asstt. Collector classified both these under Heading 84.09. On appeal from this order, the Commissioner (Appeals) accepted the classification that the assessee claimed. Hence this appeal.

2. The departmental representative explains that the crankshaft is in the nature of transmission shaft used to convert the linear motion imparted to the connecting rod by the movement of the cylinder in the engine rod to rotary motion. The connecting rod itself is used, as its name suggest, to connect the piston to the crankshaft. It is therefore separate from and independent of the crankshaft. Heading 84.83 is specifically for transmission shafts and cranks and other goods mentioned therein and will not cover connecting rod. Connecting rod is specifically

mentioned in Heading 84.09, one of the parts suitable for use solely or principally with the engines of Heading 84.07 or 84.08.

The same reasoning would apply to the crankcase which the crankshaft house. The crankcase can by no means be considered to be part of crankshaft.

3. Counsel for the respondent contends that the crankshaft under consideration by us is not a single piece crankshaft. It consists of two portions which are held by means of a crank pin on which the connecting rod is mounted. A crankshaft of this kind is incomplete without a connecting rod. In such cases, therefore the connecting rod is part of the crankshaft. He contends that the crankcase being used to house the crankshaft to be considered to be its part. He relies upon an opinion dated 1-11-2001 of S. Sudhakar Shetty.

4. The Commissioner (Appeals) has, without giving any reasoning, come to the conclusion that connecting rods and crankcase are parts of the crankshaft and the basis for his classification is based on what is really nothing more than an assumption. It is clear that in the normal course a crankshaft and a connecting rod are separate the components and separately identifiable. The McGraw Hill Dictionary of Scientific and Technical Terms defines a crankshaft as "the shaft about which a crank rotates" and the connecting rod as "any straight link that transmits motion or power from one linkage to another within a mechanism, especially linear to rotary motion, as in a reciprocating engine or compressor." The Explanatory Notes of the Harmonised System of Nomenclature the relevant headings which are identically word as the heading in the tariff specified connecting rod classified under Heading 84.09 which is for parts of goods of Heading 84.07 or 84.08. It specifies that this heading excludes engine crankshaft which are specifically included in Heading 84.63. It is to be noted that the Explanatory Notes to Heading 84.83 themselves recognise the fact that crank and crankshaft are either made from one piece or from several parts. What is to be seen is whether in the facts of this particular case a departure from this principle is justified.

5. The basis for the respondent's claim is that since the crankshaft is composed of two pieces called webs and held together by means of a pin on which the big end

of the connecting rod is positioned, the connecting "should be necessarily be considered to be a crankshaft." We are unable to agree. Merely because the crankshaft in question consist of two pieces connected together and the connecting rod is mounted on the pin connecting these two parts, it does not follow that connecting rod becomes part of the crankshaft. As we have noted, the function of the crankshaft and the connecting rod are separate and distinct. The connecting rod transmits the motion imparted to the piston by means of the expansion of the compressed gases in the cylinder to the crankshaft which converts the linear motion to rotary motion. We are not able to set any great score by the opinion of Sudhakar Shetty that the respondent relies upon. First of all, it is in the nature of a plain certificate and is not even an affidavit. Secondly, his qualification as an expert in matters relating to internal combustion engine has not been established. His claim that he is a practising engineer and professional manager with over 30 years experience in the machine tool field and he retired as General Manager of HMT Ltd., machine tool division, Bangalore. Since HMT Ltd. supplied complete range of machines for crankshaft, he has become acquainted with manufacturing process of crankshaft. This does not in our view render him qualified as to nature and function of crankshaft and connecting rod. He may perhaps be an expert in manufacture of machine tools required for making crankshaft.

If his claim to be an expert is to be accepted, the manufacturer of loom would be a textile expert and a manufacturer of goods in chemical manufacture, an expert chemist. We therefore decline to accept this opinion.

6. The argument somewhat feebly made that the crankcase is a part of the crankshaft because it houses the crankshaft cannot be accepted. A housing for goods does not become the parts of the goods that they house. The crankcase is completely different from a crankshaft. This appears to be correctly classifiable under parts of engine under Heading 84.09. The classification that has been determined by the Commissioner (Appeals) cannot be upheld. The classification that the Asstt. Collector has determined is therefore confirmed.

7. The notice issued to the respondent demanded duty following the revision in the classification. In the appeal filed before the Asstt.

Collector, the manufacturer had raised the point that in determining the duty that has to be short levied the benefit of the exemption contained in 1/93 should be considered. The Commissioner (Appeals) no doubt did not consider it necessary to examine this aspect in the light of his finding on classification. Now that classification determined by him is set aside. It will be necessary to consider this question.

8. We therefore remand the matter to the Asstt. Commissioner for determining, if called for, the duty payable by the respondent after extending the benefit of Notification 1/93, if it is entitled to.

Before doing so, the Asstt. Commissioner shall give the respondent an opportunity to be heard on this question.

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