

Escorts Ltd. Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-11-2002

Reported in : (2002)(142)ELT379TriDel

Judge : S Kang, a T V.K.

Appellant : Escorts Ltd.

Respondent : Commissioner of Central Excise,

Judgement :

1. In this appeal filed by M/s. Escorts Ltd., the issue involved is whether the hydraulic distribution assembly is classifiable under heading 87.08 of the Schedule to the Central Excise Tariff Act as confirmed by the Commissioner (Appeals) under the impugned order or under heading 84.79 as claimed by them.

2. Shri Lakshmi Kumaran, Id. Advocate, submitted that the appellants besides manufacturing tractors manufacture hydraulic distribution assembly for oil having individual function and parts thereof; that the impugned goods are classifiable under Heading 84.79 as appliances having individual function and not elsewhere specified; that the basic function of the hydraulic distribution assembly is to distribute the oil in any hydraulic circuit; that they may perform functions associated with the equipments like excavators, loaders, cranes, automobiles, earth movers etc.; that the Hydraulic distribution assembly can operate through an internal or external circuit; that the distribution for a required circuit is obtained by movement of the distributor slide to the desired position in the Hydraulic

Distribution Assembly; that the oil flow to a desired circuit is directed by the position of the crank assembly and the oil pressure is obtained by setting the relief valve provided in the Hydraulic Distribution Assembly; that thus it is evident that the impugned goods is an independent mechanical appliance and capable of working in any hydraulic circuit with a hydraulic system whether in a tractor or in other equipment. He further, submitted that the Explanatory Notes of HSN below Heading 87.08 provides that the parts and accessories of the motor vehicles to be classified under Heading 87.08 must satisfy both the following conditions : (i) They must be identifiable as being suitable for use solely or principally with the motor vehicles of Headings 87.01 to 87.05, and (ii) They must not be excluded by the provisions of the Notes to Section XVII. He further mentioned that Note 2(e) to Section XVII provides that "the expression, parts and accessories do not apply to the following articles, whether or not they are identifiable as for the goods of this Section : (e) "machine and apparatus of Heading Numbers 84.01 to 84.79, and parts thereof; articles of Heading No. 84.81 or 84.82, and, provided they constitute integral parts of engines or motors, articles of Heading No. 84.83." 3.1 Ld. Advocate thus contended that Note 2(e) read with Explanatory Notes of HSN below Heading 87.08 makes it clear that any product falling under Heading Numbers 84.01 to 84.79 will not be classifiable under Heading 87.08. He also drew our attention to the Explanatory Notes of HSN at page 1531 (Second Edition) according to which windscreen wiping mechanism falls under Heading 84.79 and not under 87.08. He also mentioned that undoubtedly windscreen wiping mechanism is an identifiable part of a motor car/bus/truck but as it has an independent function to perform it has been classified under Heading 84.79; that the Tribunal in the Appellants own case, vide Final Order No. 315/2001-B, dated 15-6-2001 [2001 (132) E.L.T. 414 (T)] has classified the Hydraulic pump under sub-heading 8413.80 instead of 87.08 on the basis of Note 2(e) to Section XVII. He finally submitted that as per Explanatory Notes of HSN, Heading 84.79 is restricted to machinery having individual function; that individual function has been defined in HSN as under :- (a) Mechanical devices, with or without motors or other driving force, whose functions can be performed distinctively from and independently of any other machine or appliance.

(b) Mechanical devices which cannot perform their functions unless they are mounted on any other machine or appliance or are incorporated in a more complex entity, provided that this function is distinct from that which is performed by the machine and does not play an integral and inseparable part in the operation of such machine.

3.2 The Learned Counsel also mentioned that the HSN has given example of an air humidifier and chain cutter, as having individual function; that the HSN also provides that engine starters also fall under Heading 84.79 as they perform individual function.

4. Countering the submissions Shri R.D. Negi, Id. SDR, submitted that the Appellants themselves had initially classified the hydraulic distribution assembly under Heading 87.08 which was subsequently changed by them to Heading 84.79; that the impugned goods is specially designed to be used with tractors and as such they satisfy the conditions specified in HSN Explanatory Notes below Heading 87.08; that it is not in dispute that the impugned goods are being sent to the Tractors Division of the Appellants wherein these are used for fitment in the tractors; that the impugned goods are not goods meant for general purpose since these are made as per specification and industrial standard of tractors; that the second condition to the effect that parts and accessories must not be excluded by the provisions of Notes to Section XVII is also satisfied inasmuch as none of the clauses of Note 2 to Section XVII excludes the impugned goods specifically; that on the other hand Note 3 to Section XVII clearly provides that reference under Chapters 86 to 88 to parts or accessories do not apply to parts and accessories which are not suitable for use solely or principally with the articles of this chapter; that it is apparent from this note that the parts or accessories which are suitable for use solely or principally with the articles of Chapters 86 to 88 will be classifiable under the respective Chapters; that since the impugned goods are identifiable as being suitable for use solely or principally with the tractor falling under Heading 87.01 of the tariff, the impugned goods will be classifiable under Heading 87.08 only. The Id. SDR also referred to the findings of the Commissioner (Appeals) in Para 9 of the impugned order according to which Notes 2 and 3 of Section XVII taken together would mean that machines and apparatus of 84.01 to 84.79, and

articles of 84.81 or 84.82 will not be covered under Section XVII unless and until they are designed so to be suitable for use solely or principally with the articles of Chapters of this Section. Id. SDR also relied upon the decision in the case of CCE, Chandigarh v. G.S. Auto International [1999 (111) E.L.T. 389 (Tribunal)].

5. In reply the learned Counsel submitted that the Revenue wants to add an additional clause in Note 2(e) to Section XVII to the effect that parts and accessories will not cover the machine and apparatus of Heading Nos. 84.01 - 84.79 unless and until they are not designed so to be suitable to be used solely or principally with the motor vehicles; that if the contention of the Revenue is accepted, the example of engine starter given in HSN as falling under Heading 84.79 would also be wrong.

6. Alternatively the Id. Counsel mentioned that the impugned products will be classifiable under Heading 84.81 of the Tariff as the Hydraulic Distribution Assembly is generally known in the trade as control valve and is also described as fluid distribution assembly or fuel manipulating assembly.

7. We have considered the submissions of both the sides. Heading 87.08 of the Central Excise Tariff applies to "parts and accessories of the motor vehicles of Heading Numbers 87.01 to 87.05" whereas Heading No.84.79 is applicable to "machines and machinery appliances having individual functions, not specified or included elsewhere in this Chapter". Notes 2 and 3 to Section XVII explain the ambit of expression parts and accessories under Section XVII, which covers Chapters 86 to 89. Note clearly provides that expression parts and accessories do not apply to the articles mentioned in the said note, whether or not they are identifiable as for the goods of Section XVII. The Clause (e) of Note 2 clearly excludes machines and apparatus of Heading Nos. 84.01 to 84.79, and parts thereof from falling under Section XVII and consequently under Chapter 87 of Central Excise Tariff. The reading of the HSN Explanatory Notes under Heading 87.08 makes it very clear that the Heading relating to parts and accessories applies only to these parts and accessories, which satisfy both the conditions mentioned therein. One of the conditions is that the parts and accessories must not be excluded by the provisions of the Notes to Section XVII. In view of this

Explanatory Note if the impugned goods is classifiable under Heading 84.79 it cannot be classified under Heading 87.08 as parts and accessories of the motor vehicles in terms of Note 2(e) to Section XVII. It has not been disputed by the Revenue that the Hydraulic Distribution Assembly performs the individual function of distributing oil in a hydraulic circuit and accordingly it will be classifiable under Heading 84.79. This finds support from the fact that Misc. items which are included under Heading 84.79 as per Explanatory Notes of HSN includes engine starters. In view of this we do not find any substance in the submissions of the Id. SDR that the impugned product being suitable for use solely or principally with tractor has to be classified under Heading 87.08 in terms of Note 3 to Section XVII. The interpretation of Note 3 came up for consideration of the Tribunal in the case of Escorts Ltd. v. CCE, Delhi II, Final Order No. 315/2000-B, dated 15-6-2000 [2001 (132) E.L.T. 414 (T)] wherein it is observed as under : "Note 3 to Section XVII cannot make Note 2 inoperative merely on the ground that particular product is suitable for use solely or principally with the articles of Chapters 86 to 88".

In fact both the Notes 2 and 3 explain the ambit of expression "parts and accessories" used in Section XVII. We also find that G.S. Auto International decision - 1999 (111) E.L.T. 389 (T), was considered by the Tribunal in the said decision by observing that in the said matter the rival Chapters were 87 and 73 and the Tribunal having regard to the Section Note 3 and voluminous evidence and certificate from Chartered Accountant came to the conclusion that goods involved therein were parts of motor vehicles and not the goods falling under Heading 73.18.

The Tribunal also observed that Chapter 73 is not excluded by Note 2 to Section XVII. Accordingly we hold that Hydraulic Distribution Assembly is classified under Heading 87.08. The appeal is thus allowed.

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