

Mahindra and Mahindra Ltd. Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-01-1986

Reported in : (1986)(26)ELT269TriDel

Appellant : Mahindra and Mahindra Ltd.

Respondent : Collector of Customs

Judgement :

1. This is a Revision Application, originally filed before the Central Government, which stood transferred to this Tribunal under Section 131-B(2) of the Customs Act, 1962 for disposal as an appeal.

2. The appellants imported a consignment of Jeep parts, transmission Synchroniser Blocking Rings (Semi-finished) under Bill of Entry No.718-D dated 12.9.1979 through Bombay Custom House. The goods were assessed by the Custom House under Heading 87.04/06(1) of the C.T.A., 1975 at the rate of 100% ad valorem plus auxiliary duty at 20% ad valorem plus additional duty of 8% ad valorem. Appellants filed an application for re-assessment of the goods and consequential refund of excise duty paid, but the Assistant Collector of Customs, Air Cargo Unit, Bombay rejected the claim as unsubstantiated as the appellants did not produce the requisite documents despite sufficient time having been allowed by the Assistant Collector. An appeal was filed before the Collector of Customs (Appeals), but the same was rejected by the impugned order. While rejecting the appeal, the Collector of Customs (Appeals), Bombay, observed that "all semi-finished goods are not covered under Heading 84.63 of C.T.A. The goods

being parts of gear box meant for jeep have been correctly classified under Heading 87.04/06." 3. In the Revision Application, the appellants have stated that in their original claim the grounds of claim were erroneously described as "Goods imported are Semi-finished and hence are assessable under item 84.63 of C.T.A. @ 60% + 15% + Rs. 1007- per m/ton and not under item 87.04/06(1)." In the Revision Application they have made the following ground of appeal; "Transmission Synchroniser Blocking Rings (Semi Finished) being Gear Box Parts were assessable under Item 84.63 of C.T.A. @ 60% + 15% Customs Duty + CVD @ Rs. 100 per m/ton being semi-finished items made of Bronz and not under item 87.04/06(1)." They have also stated that these semi-finished parts, although form parts of Motor Vehicle, would merit assessment under Heading 84.63 as they are mainly "Gear Box Parts" and as such should be charged to duty accordingly.

4. In their letter dated 14.8.86 the appellants submitted written arguments in which, after quoting the Headings 84.63 and 87.04/06 of C.T.A., 1975, they submitted the following arguments in support of their contention that the imported goods were assessable under Heading 84.63:- (i) According to Rule 2(a) of Rules for Interpretation of the First Schedule of the C.T.A. any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as imported, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be calssified as complete or finished by virtue of this rule), imported unassembled or disassembled.

(ii) It is a settled law that for the purposes of levy of customs duty on imported goods the nature and condition of the goods at the time of their import is relevant and not their condition and nature at a later point. This Tribunal's decision reported in 1985 ECR-1422 has been relied upon for this argument.

(iii) End-use of the goods can not determine their classification in general except where classification is related to the function of the goods in the Tariff Act item. Supreme Court judgment in the case of Dunlop India v. U.O.I. reported in AIR-1977-SC-597=1983 ELT/1566 (SC) has been relied upon for this argument.

(iv) Rule 3(a) of the Rules for Interpretation of the First Schedule to the C.T.A. says that "Heading which provides the most specific description shall be preferred to Heading of more general description. This Tribunal's decision reported in 1986-ECR-(8)-59 has been cited in this connection.

(v) The decision of the Tribunal in order No. 384/84-B dated 9.5.84 holds that the Tribunal has to arrive at the appropriate heading, subject to procedure set out in the Act.

(vi) Classification under Customs Tariff and C.E.T. has to be determined independently of each other. The Tribunal's decision reported in 1985-ECR-1904 has been cited in support of this argument.

(vii) Specific entry prevails over the generic entry as laid down in the following case laws:- (viii) Interpretative rules are not to be invoked when an appropriate heading is given in the Tariff. The Tribunal's decision reported in 1983-ECR-667-D has been relied upon.

5. In paragraph 8 of the written submissions dated 14.8.86, the appellants have given up their earlier claim for re-assessment of additional (c.v.) duty at Rs. 100/- per M/Ton and have accepted the c.v. duty as assessed by the Custom House. The issue to be decided by us is, therefore, limited to the classification of the goods for the purpose of basic customs duty.

6. During the hearing before us, Shri Anand R. Nadkarni, a representative of the appellants company, who has appeared on behalf of the appellants, has relied upon the written submissions dated 14.8.86 and has orally added that the entire Tariff Heading 84.63 relates to transmission system and hence the imported goods should fall under this Heading. He has relied upon this Tribunal's decision in the case of Hindustan Aeronautics Ltd., Bangalore v. Collector of Customs, Madras, reported in 1986 (25) ELT 200 in support of his argument.

7. Shri J. Gopinath, learned S.D.R. appearing for the respondent has argued that according to Section Note 2(e) of Section XVII "parts" and "parts and accessories" appearing in this Section are to be taken not to apply to machines and mechanical

appliances and other articles falling within Heading Nos. 84.01/02 to 84.59, 84.61 or 84.62 and parts of engines and motor falling within heading No. 84.63. He has also stated that Tariff Heading 84.63 covers the engine gear box, whereas motor vehicle gear box is classifiable under Heading 87.04/06. As the imported goods relate to gear box of jeep, they were correctly assessed under Heading 87.04/06(1).

8. We have carefully considered the case records and the submissions of both sides. Tariff Heading 84.63 is specific for assessment of Transmission shafts, cranks, bearing housings, plain shaft bearings, gears and gearing (including friction gears and gear boxes and other variable speed gears), flywheels, pulleys and pulley blocks, clutches and shaft couplings. This Heading appears in Section XVI, Chapter 84 of the First Schedule to the Customs Tariff Act, 1975 (hereinafter referred to as Import Tariff). Tariff Heading 87.04/06 falling under Section XVII of the Import Tariff reads as follows:- "87.04/06 : Chassis fitted with engines, bodies (including cabs) and parts and accessories of the motor vehicles falling within Heading No. 87.01, 87.02 or 87.03: (2) Parts designed for the articles covered by Sub-heading No. (1) of Heading No. 87.01 and Sub-heading No. (3) of Heading No. 87.02.

Section Note 1(k) of Section XVI lays down that this Section does not cover vehicles, aircraft, ships or boats, of section XVII. Further, as stated by the learned S.D.R., Section Note 2(e) of Section XVII provides that "parts" and "parts and accessories" appearing in this Section are to be taken not to apply to machines and mechanical appliances and other articles falling within Heading Nos. 84.01/02 to 84.59, 84.61 or 84.62 and parts of engines and motor falling within Heading No. 84.63. Jeep falls within Tariff Heading 87.02 in Section XVII of the Import Tariff. Gear Box of jeep is, therefore, assessable under Tariff Heading 87.04/06(1) as part of motor vehicle, not elsewhere specified. Although gear box is a specific item in Heading 84.63, the gear box of motor vehicle cannot be classified under this Heading as the Section Note 2(e) of Section XVII excludes from this Heading all parts of articles falling in this Section and the motor vehicles are also excluded from the pervuew of Section XVI by the Section Note 1(k) of Section XVI of the Tariff.

9. In view of the discussions in the preceding 'paragraph, none of the arguments advanced vide paragraph 4 (supra) will hold good. The provisions of the Rules of Interpretation are not disputed. As per declaration in the Bill of Entry, as subsequently explained by the appellants in the revision application, the imported goods were "semi-finished". The appellants have not produced before us any evidence to establish that the semi-finished blocking rings attained the essential character of finished parts of the gear box. The Collector of Customs (Appeals) has also not discussed as to what materials were produced before him to satisfy this criterion. However, no arguments have also been addressed on behalf of the respondent to show that this criterion was not fulfilled. In the circumstances, we are to go by the presumption that the imported semi-finished parts attained the essential character of finished gear box parts. As these goods related to gear box of jeep,' they were correctly assessable under Heading 87.04/06(1) of the Tariff as already held by us in the preceding paragraph. This classification is not on the basis of the end use, as urged by the appellants in the written submissions, but because of the provisions of Section Note 2(e) of the Section XVII and Section Note 1(k) of Section XVI of the Import Tariff. The arguments noted in paragraph 4(ii), (iii), (vii) and (vii) of -this order are not, therefore, relevant to the facts of the present case. As the appellants have accepted the c.v. duty assessed by the Custom House, the argument advanced in paragraph 4(iv) is also found to be not relevant. The appellants have cited a number of past decisions of this Tribunal as well as of Supreme Court. There is no dispute about the ratio laid down in those decisions, but the ratio of the earlier decisions are to be applied where the facts are similar. In the facts of the present case, none of those decisions is applicable to this case.

10. Having regard to our foregoing discussions, we hold that the imported jeep parts were correctly assessed under Heading 87.04/06(1) of C.T.A. 1975 and they cannot be re-assessed under Heading 84.63, as claimed by the appellants. In the result, the present appeal is to be dismissed as untenable. Ordered accordingly.