

Voltas Ltd. Vs. Collector of Customs

Voltas Ltd. Vs. Collector of Customs

SooperKanoon Citation : sooperkanoon.com/2855

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-17-1986

Reported in : (1986)(10)ECC293

Appellant : Voltas Ltd.

Respondent : Collector of Customs

Judgement :

1. This reference to a five-Member Bench was occasioned by conflict between two decisions of the Tribunal in -Collector of Customs v. Bharat Heavy Electricals b) Order No. 843/84-6 in Appeal No. 1572/81 [Collector of Customs v. Tata Merlin and Gerin Ltd.] dated 15-11-1984.
2. The question for consideration in both the aforesaid decisions was if "chamber and conduit insulators" used as parts of air blast circuit breakers in the voltage of 130 K.V., when imported, have to be classified under sub-heading (1) or (7), or both falling under (3) of the Item No. 85.18/27 of the First Schedule to the Customs Tariff Act, 1975 (hereinafter the Schedule).
3. The aforesaid question arises in the instant appeal as well. On an application of refund, the Assistant Collector held that the goods were classifiable under item 85.18/27(1). On an appeal, this order was confirmed. Hence the instant appeal. In an earlier hearing, while the Appellant cited the Tribunal's decision in the Tata-Merlin case, the Respondent relied upon the decision in 1984 (16) ELT 512.

4. In 1984 (16) ELT 512, the goods imported were porcelain insulators of 145 K.V. and 245 K.V. for use as part of minimum oil circuit breakers. On a question as to whether they would fall within item 85.18/27(1) or 85.18/27(3) or 85.18/27(7) of the Schedule, item 85.18/27(3) was ruled out straightaway as inapplicable to the goods in question. It was also observed that it was not the case of either party that the goods fall within the said sub-item. As between the two remaining entries, it was observed that evidence was necessary and consequently the matter was remanded for de novo consideration.

5. In the first of the two aforesaid cases, (M/s Tata Merlin and Gerin Ltd.), it would appear that the goods imported were chamber insulators and conduit insulators and the competing entries that came to be considered were again 85.18/27(1), 85.18/27(3) and 85.18/27(7) of the Schedule. The Tribunal held on a consideration of the aforesaid items that the goods in question were to be classified under item 85.18/27(3).

6. Thus, while in 1984 (16) ELT 512, sub-item 85.18/27(3) was ruled out as inapplicable, the goods were held squarely to come within that sub-item in the Tata-Merlin case.

7. Certain other decisions of the Tribunal have been adverted to in the course of arguments on the identical issue. They are :-General Manager (Stores), Central Railways, Bombay v. Collector of Customs, Bombay], wherein it was held that insulators are classifiable under sub-item 85.18/27(1) of the Schedule rather than under sub-item 85.18/27(3); Elpro International Ltd., Bombay v. Collector of Customs, Bombay], wherein it was held that insulators are classifiable under sub-item (1) and not sub-item (3) of 85.18/27 of the Schedule.

(c) 1983 ELT 177, wherein the question of applicability of Notification No. 172-Cus., dated 8-8-1977 to insulators, actuators and contacts was in controversy.

8. Item No. 85.18/27 of the Schedule in so far as material reads as under-"Electrical capacitors; electrical apparatus for making and breaking electrical circuits for the protection of electrical circuits, or for making connections to or in electrical circuits; ... insulators of any materials; insulating fittings for electrical

equipment;

(3) Electrical apparatus for making and breaking electrical circuits, for the protection of electrical circuits or for making connections to or in electrical circuits; resistors; switch-boards and control panels 40%: Provided that the articles are designed for use in circuits of 40 volts or above, or of 20 amperes or above or for use with motor of 1.5 kilowatts or above.

(7) Insulators designed for use in an electrical transmission system of 400 volts or above. 40% 9. It is conceded on both sides that the goods in question form part of electrical apparatus for making or breaking electrical circuits in terms of the description in sub-item (3). The proviso to the said item is also satisfied.

10. But then, Shri Gopinath for the Respondent, invites our attention to the description of the goods in question in the invoice ["Components for switch gear (Air Blast Circuit breakers)] and the rule 2(a) in the Rules for interpretation of the Schedule and contends that, in terms thereof, the goods having been described to be "insulators", and such insulators having been specifically mentioned in the principal Heading 85.18/27, they cannot be classified under sub-item (3) thereof, as a part or component of an electrical apparatus for making and breaking electrical circuits. Although to be made use of in an electrical circuit to make or break a circuit, an insulator is still one that has been specifically mentioned in the Heading and having the essential character of the complete or finished article by itself and, accordingly, it is not to be equated with the electrical apparatus itself, of which, may be, it is a component. Nor do the insulators, in question, fall within sub-item (7) when, for a fact, they cannot, as such, be Used straightaway. They have to be fitted in a circuit breaker and then used in the electrical system.

(a) the Headings of the various sections of the First Schedule are not only meant for facility of easy reference but they are material for construction of tariff items, except where it is otherwise specifically required, when they lose their primacy- The rules applicable for the construction of the main headings apply equally to the construction of the sub-headings [reliance on rule 1 of the Rules for interpretation of the Schedule]; (b) in terms of the section note (2) of 5. 16 of the 1st Schedule, parts of machines, not being parts of insulators falling within Heading No.

85.18/27, if suitable for use solely or principally with a particular kind of machine are to be classified with the machines of that kind; (c) the goods, in question, are not parts of insulators but insulators themselves and although not "Electrical apparatus for making or breaking electrical circuits", are still part of such apparatus. Such circuit breakers are essential for transmission of energy. Accordingly, they are to be classified under sub-item 3 of the Heading; (d) alternatively, since the goods are proven to be insulators for use in a transmission system, they fall squarely under sub-item (7).

12. In the course of his submissions, Shri Lakshmikumaran had given up reliance on certain affidavits filed on behalf of the Appellant, when objected to, on behalf of the Respondent. He, however, invited our attention not merely to the decision in the Tata-Merlin case but certain technical literature as well to explain what is meant by a "Circuit Breaker".

13. It would appear to us on the perusal of papers and the submissions made that - (a) when the Heading specifically mentions "insulators" amongst others including "Electrical apparatus for making or breaking circuits" and the sub-items do not advert to insulators other than those "designed for use in electrical transmission system of 400 volts or above", it is futile to contend for their assessment as parts of electrical apparatus for making or breaking electrical circuits notwithstanding the residuary sub-item ("not elsewhere specified"). To elaborate - the main heading speaks separately of both electrical apparatus for making or breaking electrical circuits as well as insulators. When the sub-item (3) refers only to the former, one cannot be heard to say that it includes the latter as well, since, after all, it is a part of the former. Such a plea could possibly sustain if the residuary sub-item (1) ["Not elsewhere specified"] or sub-item (7) [insulators "designed for use in an electrical transmission system etc."] were not there. A construction to the contrary, would render the residuary Sub-Heading No. (1) as well as Sub-Heading (7) altogether nugatory and otiose; (b) the insulators, in question, have, therefore, necessarily to fall within sub-headings (1) or (7) (if at all) but not (3); (i) the goods imported were described in the notice to show cause for a Revision by the Government of India to be "in the nature of insulating fittings" rather than insulator's as claimed by the importer; (ii) before the Tribunal, it was contended for the assessee/appellant that

they were "parts of circuit breakers which are designed for use in circuits above 400 v. These parts do possess the best insulator properties and are universally made of glass paper tubes or cylinders of paper laminated tubes or cylinders.

However, these are used exclusively with circuit breakers so that they can function as an apparatus for making or breaking circuits.

They are, however, not merely insulated mechanical support or basis for insulating conductors or live parts, unlike the usual insulating fittings"; nevertheless, it does not appear that any categorical conclusion was arrived at on the issue as to whether they were "insulator fittings" or "insulators" used in an electrical apparatus for making or breaking circuits. A conclusion one way or other was necessary, seeing that if they were merely "insulator fittings" and not "insulators", section note 2 of Chapter XVI, in terms thereof, is not attracted as it is inapplicable for "parts of insulators".

Nor was it considered if, notwithstanding specific mention of insulators in the Heading and sub-heading (7) and the residuary sub-item (1) (not elsewhere specified) they would still qualify to be classified as parts of electrical apparatus for making or breaking circuits; (iv) we are, therefore, unable to uphold the decision in the said case. On the contrary, the decisions in 1983 ELT 1794 and 1983 ELT 2047 accord with our views; (v) the decision in 1984 (16) ELT 512 was on a concession, and the decision of the Tribunal in 1983 ELT 177 centres entirely around eligibility to the benefit of the exemption in Customs Notification No. 172 of 8-8-1977, once the goods were admittedly classifiable under Heading No. 85.18/27(1). It has, therefore, no relevance; (d) the contention, in the alternative, for classification under sub-item (7) also does not commend itself to us, seeing that the insulators in question have, admittedly, to be used, not by themselves, but necessarily as parts of circuit breakers.

14. In the result, we hold that the insulators in question are to be classified under Sub-Heading (1) of Heading 85.18/27 and not under Sub-Headings (3) or (7) thereof.