

Voltas Limited Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-03-1986

Reported in : (1986)(10)ECC273

Appellant : Voltas Limited

Respondent : Collector of Customs

Judgement :

1. The issue involved in these three appeals, captioned above, relates to the classification for the purpose of customs duty in respect to the goods imported by the appellants vide Bills of Entry: (1) No. 1712 dated 13-7-1977 (Appeal No. C/1973/86-B2); (2) No. 3333 dated 13-11-1977 (Appeal No. C/1974/86-B2); and (3) No. 1154 dated 8-12-1977 (Appeal No. 1118/79-B2), respectively.

2. The goods imported by means of all the above-mentioned three Bills of Entry were of the same description, and although we do not have the Bills of Entry filed before us but, according to the refund claims, the description was: 'drill pipes'. These were assessed to customs duty under TI 73.17/19(2) of the CTA, as it prevailed at the time of imports; namely, in the Tariff of 1977. The CV duty was charged with reference to TI 26AA of the CET. There is no dispute as to the application of this Tariff Heading in so far as CV duty is concerned but for the fact that in one case, which is B/E No. 1154 dated 8-12-1977, and subject-matter of Appeal No. 1118/79-B2, the rate applied, according to the appellants, is far in excess of the rate actually applicable at the relevant time. We will advert to this aspect towards the end of the order and, in the first instance, we propose to deal

with the question of classification having a bearing on basic customs duty.

3. Shri A.N. Haksar, Advocate, has appeared for the appellants, to-day, accompanied by Miss Nisha Srivastava, Advocate, and has argued commonly in all the three appeals on behalf of the appellants. His main contention was that the 'drill pipes' were specifically meant for fitting into the portable oil rigs, which can come under the category of boring machines as 'oil rigs' fall under TI 84.23 of the CTA. He contends that the lower authorities erred in applying Interpretative Rule 3(a) of the CTA and treating Heading 73.17/19(2) as a specific Heading for these goods, but the Section Note to Section XV, which covers Chapter 73 (Reference Note 1(f), specifically excludes goods of Chapter 73 which fall under any of the headings of goods of Section XVI. According to Shri Haksar, Section XVI includes Chapter 84, which covers various 'machinery' and machinery-appliances', and that the machines, for which these drill pipes were required, being of specific Heading 84.23 of the CTA, these had to be taken for the purpose of assessment as going with the main machinery. He drew our attention in this regard to Section Note 2(b) of Section XVI, which reads as follows: "Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines falling within the same. Heading (including a machine falling within Heading No. 84.59) or electrical goods and apparatus falling within Heading No. 85.18/27 are to be classified with the machines of that kind.

However, goods which are equally suitable for use principally with the goods of Heading Nos. 85.13 and 85.15 are to be classified in Heading No. 85.13." 4. According to Shri Haksar, there was no dispute as to the factual position; namely, that these drill pipes were for use and application in the oil rigs because this plea of the appellants has not been controverted anywhere and, consequently, it has to be taken as an established case that these 'drill pipes' were for use with the oil rigs which are classifiable under TI 84.23 of the CTA and, as such, the Customs authorities erred in putting these 'drill pipes' under TI 73.17/19(2) of the CTA. Shri Haksar also placed reliance on Explanatory Notes to C.C.C.N., particularly Section Notes under Chapter 84.23 (page 1243, Volume 3), according to which, many specific items, including 'drill pipes', have been put under Chapter 84.23 of the BTN. The learned Counsel argued that, in the absence of anything to the contrary

in the CTA, these Explanatory Notes can be taken as a very good guide for the purpose of classification of these 'drill pipes' and ought to be put under TI 84.23 of the CTA. On it being put to him, specifically, as to whether he would bear out the plea on facts; namely, that these drill pipes were used solely or principally for oil rigs, he expressed his inability to do so on the material supplied by the appellants, but laid emphasis on the fact that these drill pipes have special features, as per specifications indicated in the invoice, read with the A.P.I.(American Petroleum Institute) Specifications, also placed on record.

He, therefore, concluded that- this furnished abundant material to support the appellants' plea that the drill pipes were not of general category so as to take them to Chapter 73, but have to be treated as 'parts of machinery' falling under TI 84.23 of the CTA.5. Shri 3. Gopinath, learned SDR, countered the arguments by pointing out, at the outset, that TI 73.17/19(2) of the CTA specifically covered: 'drilling tubes, pipes and blanks thereof'. He argued that this was not so in the C.C.C.N. as Chapter 73 thereof referred only to: 'tubes and pipes in general'. According to Shri Gopinath, inclusion of drilling tubes and pipes in the CTA Heading is, apparently, by design and is a manifest deviation from the CCCN. He argued, therefore, that apart from the fact that, in view of the statutory provisions of Customs Tariff Act, the Explanatory Note to CCCN would be "only of persuasive value" and this has been held to be so by the Tribunal in a number of cases; otherwise also, for these goods, TI 73.17/19(2) of the CTA provides a. specific Heading which is missing from the CCCN and, as such, Interpretative Rule 3(a) of the CTA would come fully into play in this case.

6. The learned SDR also pointed out that Note 2(b) of Section XVI would apply only if the appellants had been able to satisfy that these drill pipes were "Solely and principally for use for specified machinery falling under Chapter 84." Shri Gopinath submitted, therefore, that there being no such evidence, it was not open for the appellants to contend that the goods imported by them ought to be treated as parts of machinery falling under TI 84.23. He fully justified the view held by the lower authorities that TI 73.17/19(2) of the CTA furnishes a Clearly specific Heading for these drill pipes whereas the claim made by the appellants was of a general nature; namely, as 'part of machinery' and that, with the help of

Interpretative Rule 3(a), the specific heading has to be preferred to general heading.

7. Shri Gopinath also placed reliance on a judgment of the CEGAT, reported in '1986(24) ELT 637', in the case of 'Hindustan Petroleum Corporation Ltd., Visakhapatnam v. Collector of Customs, Madras', where a similar issue has been dealt with at length. Our attention was invited to observations of the Bench in paragraph 3 of this judgment, laying down that: "There is no universal rule in the Customs Tariff Act, 1975, to the effect that all spare parts would necessarily fall in the machinery chapter only." Shri Gopinath submitted that the principles laid down in this authority apply very squarely to the present case.

7A. Shri Haksar, in a short rejoinder, again reiterated his reliance on Section Note 2(b) to Section XVI of the CTA and Chapter Note 84.23 of the Explanatory Notes to the CCCN, as referred to above.

8. After hearing the learned representatives of both sides, we have given our careful thought to the matter. We find that the description of the goods is, admittedly, as: "drill pipes". We do not have Bills of Entry filed before us so as to know as to whether any other description, or clarification, was added at the time of declaration of the goods or not, but from the invoice description, we take that the goods are 'drill pipes' of API specifications in given lengths. The appellants have filed copies of the API specifications and some portions of the catalogue of 'M/s Flame Industries' who are their suppliers, but we find that description is confined only to the qualitative aspect of the 'drill pipes' and their special features as such. There is no indication from the papers supplied by the appellants that these 'drill pipes' were made solely or principally for oil rigs.

We, therefore, find it to be a case where, on facts, the claim of the appellants, that the goods imported by them were specific parts of machine, falling under TI 84, has remained unsubstantiated. We respectfully agree with the observations made in the case decided by CEGAT (supra) to the effect that the scheme of the Customs Tariff Act was such that it can safely be concluded that spare parts of machinery need not necessarily fall under 'machinery chapter' and that it was apparent from description in various chapter Headings that various spare parts

have been classified in accordance with the materials of which they are composed rather than the functions or application to which they are put to. The present matter appears to be such a case because here also, the 'drill pipes', made of iron or steel, have been put by design under TI 73.17/19(2) of the CTA. As already observed, the appellants have not been able to bring forth such material on record as to substantiate their contention that these drill pipes were solely or principally meant for use in the oil rigs so as to take them to TI 84.23 of the CTA with the help of Section Note 2(b) to Section XVI. Once that is not established, then provisions of Section Note 1(f) to Section XV would not come into play. In view of this clear scheme of the CTA and the material before us, we agree with the learned SDR that Explanatory Note to CCCN cannot be of any avail to the appellants.

9. We are, therefore, satisfied that the classification, as determined by the Customs authorities at the time of clearance of the goods, was correct and no case for interference has been made out. The three appeals, on the question of re-assessment for purpose of basic custom duty, are therefore dismissed.

10. So far as the question of quantum of CV duty, in Appeal No.1118/79-B2, pertaining to B/E No. 1154 dated 8-12-1977, is concerned, even the learned SDR is not able to say whether the rate applied is correct. It has also been pointed out by the learned Counsel of the appellants that, in the case of other two clearances, which are the subject-matter of Appeals No. 1973/86-B2 & 1974/86-B2, a much lower rate has been applied though the imports there were also in the same year and the same tariff item, TI 26AA of CET, has been applied in all the three cases. He, therefore, requests that the matter may be remanded so far as assessment of CV duty under B/E 1154 dated 8-12-1977, is concerned, for re-examination as to the quantum of rate of CV Duty applicable. We accept this prayer in the circumstances, and allow Appeal No. 1118/798B2, only to this limited extent; namely, that the matter of assessment of rate of CV Duty in respect of this Bill of Entry shall be re-examined after notice to the appellants, and for this purpose, matter is remanded to Assistant Collector of Customs, who shall re-adjudicate on this question of rate, and quantum, of CV Duty payable in this case, within four months.