

Cc Vs. Hindustan Motors Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-30-2003

Reported in : (2003)(89)ECC617

Judge : Author: V Agrawal

Appellant : Cc

Respondent : Hindustan Motors Ltd.

Judgement :

1. In these three appelas, filed by Revenue, the issue involved is whether the Respondents, M/s. Hindustan Motors Ltd., have imported complete Diesel/Petrol Engines in unassembled condition as claimed by the Revenue or as parts/components of such engines as confirmed by the Commissioner (Appeals) under the impugned common Order No. 6-8/2001 dated 28.12.2001.

2. Ms. Neeta Lal Butalia, learned SDR, mentioned that M/s. Hindustan Motors Ltd. manufactures diesel and petrol engines for automobile car, etc.; that they imported the impugned goods from their collaborator M/s. Mitsubishi Motors Co. and classified the same under specific Tariff headings of the Customs Tariff applicable to individual parts; that the Bill of Entry and related Purchase Order, however, revealed that they had placed orders for specific numbers/sets of Engines/Transmission components and addons. she, further, mentioned that the Respondents have filed 104 Bills of entry; that components covered under each Bill of Entry were specific numbers/sets of engines in unassembled/CKD condition;

that they used to place orders for specific numbers/sets of engine which their Collaborators used to supply them in unassembled/CKD condition under the cover of one single invoice which were subsequently cleared by filing Bill of Entry; that each bill of entry covered specific number of Petrol/diesel engine in unassembled/CKD condition. She emphasized that what was proposed to be imported by them under each Bill of Entry were not individual parts/components of engines but in fact complete Diesel/Petrol Engines of a particular Model Number in unassembled/CKD condition; that all the parts/components cleared against each Bill of Entry when assembled would have the essential characteristics of specific numbers of complete I.C. Engine; that the quantity of indigenous parts, used by them was insignificant and these parts were used to make the engine functional; that essential character cannot be substituted for functional character of an article/machine; that all functional components cannot be said to be essential; that what imparts the essential character to a machine are only the essential components without which the machine would lose its very identity or its continued existence.

She mentioned that as per Rule 2(a) of the Interpretative Rules, and article which is incomplete or unfinished but which has the essential character of the complete or finished article should also be classified as the complete article and the complete or finished articles presented unassembled or disassembled would also be classifiable as the complete article; that applying the said Rule, a complete engine has been imported in unassembled condition; that as per Explanatory Notes of H.S.N., a machine lacking only a fly wheel, a bed plate, calender rolls, tool holders, etc., is classified in the same Heading as the machine and not in any separate heading provided for parts. She contended that in view of thus, it is apparent that cylinder, piston, connecting rod, crank shaft, inlet and exhaust valves when taken together give an engine its essential character/feature of conversion of heat energy into mechanical energy; that if these elements are presented together would render them classifiable as engine. She pointed out that the imported goods contain cylinder, piston, connecting rod, crank shaft and inlet and exhaust valve and, therefore, the imported goods have the essential character of an engine.

3. The learned SDR further emphasized that the Respondents imported all the components required to give essential character to specific number of engines under one Bill of Entry; that it is totally incorrect that when components imported under all the Bills of Entry are assembled they would bring into existence complete engine; that this inference drawn by the Commission (Appeals) in the impugned Order is not based on facts of the case. In support of her contention she referred to Invoice No. P7300 dated 22.12.1998 of M/s. Mitsubishi which is for "480 Sets of components of Diesel Engine and T/Mission Against Opener' Purchase Order No. F-865 dated 03.12.98. MODEL F5 M 41 W12 F7 A6 4D 68251Z2B" She also mentioned that Purchase Order No. F-865 dated 26.11.98 of Hindustan Motors Ltd. also specifically mention as under: "Components of 4D6825122 W of Diesel Engine & F 5M41 W 12F 7A6" 480 sets The corresponding Packing List and Bill of Lading also contain the similar description that is 480 sets of components of Diesel Engine ...

She also mentioned that Bill of Entry No. 86 dated 19.2.99 is for the same number of 480 sets. She contended that it is thus apparent that the components required for specific number of engines were imported against invoices and the Respondents filed Bill of Entry for clearance of the components required for specific number of Petrol/Diesel Engines; that the Commissioner (Appeals) himself has given the finding that "rule 2(a) would be applicable to and invocable only in cases where the unfinished or incomplete or unassembled or disassembled article is imported in a single consignment and they are presented to customs for assessment purpose at one point of time"; that the instant case is squarely covered by the said finding in the impugned Order as the unassembled goods have been presented in a single consignment under a single Bill of Entry.

4. She also mentioned that the imported goods have been identified as "CKD Packs of Licensed Engines" in the 'License And Technical Assistance Agreement (Engines & Transmission) between M/s. Mitsubishi Motors Corporation and M/s. Hindustan Motors Ltd. She finally submitted that Rule 2(a) clearly stipulates that even if 100% components are not imported they still are to be assessed to duty as complete article provided that they have essential character of the complete or finished article. She relied upon the decision in Universal Commercial Corpn.

v. Collector of Customs, Delhi, 1994 (69) ELT 150 (T) wherein it has been held that "the word 'essential character' occurring in Rule 2(a) cannot be interpreted to mean 'functional character'"; that in this case the Tribunal has held that the imported goods have the essential character of air-conditioning machine though they may be incomplete air-conditioning and other parts are also required to make it a functional airconditioner.

5 Countering the arguments, Shri M Chandrasekharan, learned Sr.

Advocate, submitted that the Respondents have imported only components of engines; that the imported goods are not CKD kits; that Clause 1.3 of the Agreement refers to parts and components of engines; that further as per Clause 3.2 of the said Agreement, M/s. Mitsubishi have to send their personnel to the Respondents to give technical assistance and instructions in connection with manufacture and assembly of engine; that for local parts used in the assembly of engines, Royalty was 5% as per Article 4 of the Agreement; that it is thus apparent that what have been imported by them are nothing but parts and the complete engine cannot be completely manufactured without indigenous parts. The learned Sr. Counsel, further, submitted that the Commissioner (Appeals) has given a specific finding that "as brought out by the Adjudicating Officer himself in the Order-in-Original that when all the aforesaid components and parts imported under the said bills of entry over a period of time i.e. Feb., 99 to July, 2000 when assembled would form a complete engine"; that thus the Adjudicating Authority has himself referred to the imports over a period of time.

He emphasized that each one of the components imported by the Respondents is identifiable as separate part and as per Rule 1 of the rules for the Interpretation of the Customs Schedule, classification shall be determined according to the terms of the headings; that it has been held by the Tribunal in *Netlon India Ltd. v. CCE, Vadodra*, 2000 (121) ELT 675(T); that Rules for Interpretation are applicable only when the classification of the product cannot be determined in accordance with Headings or Chapter/Section Notes. Reliance has also been placed on the decision in *Hindustan Packaging Co. Ltd. v. CCE, Vadodara*, 1995 (75) ELT 313 (T) wherein it has been held that the Rules of Interpretation can come into play

and can be invoked if only the classification cannot be determined according to the terms of the heading and any relevant Section or Chapter Notes. He also referred to the following decisions:-Bharat Heavy Electricals Ltd. v. C.C., Madras -1987 (28) ELT 545(T), 6.1 He also mentioned that Rule 2(a) speaks of incomplete or unfinished article; that there is no reference to any other thing but article; that in the present matter, all the articles imported by the Respondents are complete in themselves and not incomplete or unfinished; that the process undertaken by them in their factory amounts to manufacture as per Section 2(f) of the Central Excise Act; that the Assistant Commissioner has admitted this fact in Para 1 of the Order-in-Original. He relied upon the decision of the Larger Bench of the Tribunal in Sony India Ltd. v. C.C., ICD, New Delhi, 2002 (50) RLT 858 (Para 24) which refers to the complex manufacturing process undertaken by M/s. Sony India Ltd. The learned SDR countered by contending that it is clear from Para 24 of the decision in Sony India case that the components were subjected to working operation which is not so in the present matter.

6.2 The learned Sr. Advocate again emphasized that the Revenue's case is that when the components imported by them are assembled, they would have the essential character of Engines; that Rule 2(a) is to be applied to what is being imported; that the import by the Respondent is of components which are complete and finished; that what are being presented are components; that the second part of Rule 2(a) would apply only when all the parts are imported which they are admittedly not importing.

7. We have considered the submissions of both the sides. The fact which is not in dispute is that M/s. Hindustan Motors Ltd. imported components of diesel/petrol engines from their Collaborator and procured some parts locally also. It is the contention of the Revenue that the Revenue that the Respondents' Collaborator M/s. Mitsubishi Motors Corporation were sending required number of engines under the cover of one single invoice and that all the parts cleared against each bill of entry when assembled would have the essential character of specific number of engines. The Commissioner (Appeals) has, on the other hand, proceeded on the ground that the Respondents did not import all the components required for the manufacture of complete engines under one bill of entry and the

Courts and the Tribunal have held in a number of cases that the goods imported under a number of bills of entry over a period of time can only be assessed as they are physically presented for classification before the Custom Officials and their clubbing together of the goods "for the purpose of assessment as a finished as a finished product is strictly no-no". There can not be a dispute about this legal Proposition which has been upheld by the Larger Bench of this Tribunal in Sony India case, supra. The Larger Bench of the Tribunal has held in Sony India that the consignments imported under 94 different bills of entry spread over a period can not be combined to hold that components imported are to be considered as CTV unassembled by applying Rule 2(a) of Interpretative Rules.

8. The learned SDR, however, has taken pains to establish that the facts in the present matter are entirely different. She has emphasized that the findings of the Commissioner (Appeals), in the impugned Order is factually incorrect since the Respondents has imported all the components required to give essential characteristic to specific number of engines under one Bill of Entry. The Revenue has produced two volumes containing Purchase Orders placed by the Respondents, Invoices issued by the foreign supplier, packing lists, Bills of Lading and Bills of Entry along with Annexures which show clearly that the goods imported were sets of Diesel/Petrol Engines. This is apparent from Invoices/Purchase Order referred to by the learned SDR. We also observe that Invoices are in respect of a specific number of Sets components for engine. For instance the description of goods in Invoice No. P7357 dated 8.1.99 reads as under: "180 sets components For Petrol Engine And Transmission Against Opener's Purchase Order No. E-883 DTD 1.12.98." The Invoices mention also the Model Number. The corresponding Bill of Entry with its Annexure clearly shows that all the parts were imported under one Bill of Entry and not over a period of time. Nothing has been brought on record before us to rebut the material adduced by the Revenue to prove that each invoice was not in respect of sets of engines. This supports the case of the Revenue that the engines need not be assembled by combining the goods imported over a period of time. Once the Revenue has succeeded in showing that what was imported under one Bill of Entry were sets of engine in unassembled form and once they are assembled would have the essential character of engine, the findings in the impugned Order cannot be

upheld.9. The next question to be considered is whether Rule 2(a) of General Rules for the Interpretation of Customs Schedule is applicable to the facts Rule 2(a) reads as under: "Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, 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 classified as complete or finished by virtue of this rule), presented unassembled or disassembled. The Respondents have imported component sets of engines in unassembled condition which on assembly would have the essential character of the complete or finished article. No doubt the Respondents would need some local components to complete the assembly of engine. But that fact can not make Rule 2(a) inapplicable as Rule 2(a) is there to be invoked in such cases only for the purpose of determining the classification of the product. There is no the submission of the learned Sr. Advocate that Rule 2(a) speaks of an article and in the present case, article is component of engine which is complete or finished and it should be classified as such. The question involved is whether the article imported is component or engine which cannot be determined by applying Rule 1 of the Interpretative Rules and resort has to be made to Rule 2(a), As per Explanatory Notes of HSN, "the first part of Rule 2(a) extends the scope of any heading which refers to a particular article to cover not only the complete article but also that article incomplete or unfinished, provided that, as presented, it has the essential character of the complete or finished article." The explanatory Notes below Section XVI of H.S.N. explains the applicability of Rule 2(a) by providing that "a machine lacking only a fly wheel, a bed plate, calender rolls, tool holders, etc. is classified in the same heading as the machine, and not in any separate heading provided for parts." Thus it is apparent that some part may not be there and procured separately. What is necessary for the application of Rule 2(a) is that article, as presented, has the essential character of the complete or finished article. This view is further strengthened by the decision of the Supreme Court in Sharp Business Machines Pvt.

Ltd. vs, C.C, 1990(49) ELT 640(SC) wherein the importer had imported Plain Copiers in SKID/CKD condition under the cover of 3 Bills of Entry. The Supreme

Court took the view that consignment covered by all the Bills of Entry assembled together should be looked into to examine whether the importer was importing an item which is totally prohibited under the Policy. In that matter also the individual items were complete and finished by themselves. We also do not agree with the contention of the Respondents that for applying the second part of Rule 2(a) hundred percent parts should be imported in unassembled or disassembled condition.

The explanatory Notes of H.S.N. does not support the said view as it clearly mentions that "The second part of Rule 2(a) provides that complete or finished article presented unassembled or disassembled are to be classified in the same heading as the assembled article..... This Rule also applies to incomplete or unfinished article presented article presented unassembled or disassembled provided that they are to be treated as completed or finished articles by virtue of the first part of this Rule." This is also further clarified in Explanatory Notes of HSN to Section XVI wherein it is mentioned that machines transported in an unassembled state, "although in effect the goods are then a collection of parts, are classified as being the machine in question and not in any heading for parts".

The same applies to an incomplete machine having the features of the complete machine presented unassembled. Further Explanatory Notes of HSN below Chapter 89 mentions that "Complete vessel presented unassembled, and hulls, unfinished or incomplete vessels (whether assembled or not), are classifiable as vessels of a particular kind, if they have the essential character of that kind of vessel." The decision in Sony India Ltd. will not apply inasmuch there the revenue wanted to combine the 94 consignments under 94 different Bills of Entry spread over a period of time whereas in the present matter each bill of entry, as shown by the learned SDR, represents sets of engine. The decision in the case of HCL Ltd. v. UOI, 1992 (59) ELT 509 (CAL) is not applicable to the facts of the present matter as the issue before the Hon'ble High Court for decision was entirely different. The Hon'ble Calcutta High Court held that the importer can not be held to be guilty of breaking either Section 11(d) or 112 (a) of the Customs Act since the consignments were imported in accordance with the licence and since even after assembly the importer did not achieve something which the importer could not

have legally achieved.

In fact the Hon'ble High Court assumed for the legal purpose of disposal of the case "that substantially all the parts of the photo copier machine were imported by the petitioner in a knocked down or disassembled condition." Regarding post importation operation, a Larger Bench of 5 Members of this Tribunal has held in *Bharat Heavy Electricals Ltd., supra*, that the cost of post importation operation could not be decisive in directing the applicability of Rule 29a). In *Sony India case*, Learned SDR has pointed out that many components were subjected to working operation which is not so in respect of the present matters. Moreover explanatory Notes of HSN mention that for the purpose of Rule 2(a), "articles presented unassembled or disassembled" means articles the components of which are to be assembled either by means of fixing devices or by riveting or welding, for example, provided only assembly operations are involved. The Note further mentions that "no account is to be taken in that regard of the complexity of the assembly method." Accordingly we hold that Rule 29a) of the Interpretative rules is applicable in the present matters.

Accordingly we set aside the impugned Order and allow the appeals filed by the Revenue.

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