Jcb India Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-24-2005

Judge : S Kang, Vice-, S T T.V.

Appellant : Jcb India Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. M/s. JCB India Ltd. the appellants manufacture excavator loaders of different models in Haryana. They filed 18 Bills of Entry for import of various components inter alia including column switches as part of excavator loaders. They claimed the classification of column switches under Customs Tariff Heading 8536.50 and claimed the benefit of Notification No. 21/02-Cus., dt. 1-3-2002 as amended at S. No. 331 for concessional rate of duty. However, the Bills of Entry were finalized by the lower authorities who classified the column switches under CTH 8431.49.90 as parts of excavators and not as independent articles under CTH 8536 on the ground that the item imported has multiple functions than simply establishing electrical contacts. Further the column switches were found not only to operate the electrical system of excavator but also had the function of a gear. The appellants contention before Commissioner (Appeals) that the item falls under 8536.50 did not result in an order in favour of them.

Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 volts.

3. In this connection Section Note 2(a) under Section XVI is also referred to: Parts which are goods included in any of the headings of Chapter 84 or 85 (other than Headings 84.09, 84.31, 84.48, 84.66, 84.73, 84.85, 84.03, 85.22, 85.29, 85.38 and 85.48) are in all cases to be classified in their respective headings.

4. To beef up their arguments the appellants produces a copy of letter dt. 23-4-2004 received from their manufacturers to prove a point that switches could also be used elsewhere : We hereby confirm that the above switch is supplied to JCB Transmissions, Wrexham, England and JCB India for dump trucks, telescopic handier and backhoo machines.

5. Ld. DR also produces yet another letter dt. 16-6-2003 written by the importers with reference to the same specific column switches declaring them that they are specific parts of these machines and cannot be used anywhere else.

6. Ld. Counsel however, refers to the following case laws to drive home his contention: In this case, the appellants had claimed classification under Tariff Heading 8536.90 with benefit of Notification No. 17/01. Though the Customs Authorities took the view that the item should be correctly classified as "part of compressor" under Tariff Heading 8414 without the benefit of exemption, the Tribunal decided that the item is an independent complete article itself.

(ii) Perfect Electric Concern Pvt. Ltd. v. CCE, Patna In this case Tribunal held that in the scheme of new Central Excise Tariff Act, classification has to be determined under the Rules of Interpretation which included the various Section/Chapter/ Notes/Section Note 2 of Section XVII of the Tariff Schedule, which covers Chapter 87 provides that the expression 'parts and accessories' therein does not apply to other electrical machinery and equipment whether or not they are identifiable as for the goods of that Section, they are classifiable in Chapter 85 which falls in Section XVI.Texmaco Ltd. v. CCE, Calcutta-III In this case the Tribunal held that items having multiple uses cannot be classified on the basis of their use in a particular industry.CC, Bombay v. Business Forms Ltd. Thr. O.L.

In this case the Apex Court held that Explanatory Notes to HSN are entitled to far greater consideration.

7. Ld. DR contends that the item is correctly classifiable under Heading 8431.49.90. 84.31 reads as follows : Parts suitable for use solely or principally with the machinery of Headings 8425 to 8430.

He also explains that HSN Explanatory Notes do not reflect the existing tariff structure. (According to the Ld. Counsel, this is not correct inasmuch as the Explanatory Notes reflect the contents of Tariff). The contention of the Ld. DR is that HSN Explanatory Notes gives guidelines where difficulties arise. According to him the subject item can be clearly and straightway brought under 8431. He also shows the drawing produced by the importers at the time of import in respect of their Part No. 701/21200. He points out that the subject item has been described by the importer as "part" and not as "switches" in this drawing. He further informs that even in the Bills of Entry filed by them, the item is described in terms its parts numbers. He refers to the letter dt. 16-6-2003 in which the importer themselves had stated that the items in question are specific parts of the Excavator Loader/Machines and cannot be used anywhere else. To support his contention, the Ld. DR relies upon the following judgments : 5. As regards the question whether these switches are automobile spared or that they are electrical fittings, there should be no difficulty in deciding, inasmuch as the Supreme Court in the case of Atul Glass Industries Ltd. v. Collector of Central Excise, , has considered as to what should be the approach of the Court in such cases. The test in all such cases is, how the product is commercially known".Kerala State Electronics Dev. Corpn. Ltd. v. CC, Madras 2002 (147) E.L.T. 1274 (Tri. - Chennai) 6. The notification in question it is seen envisages concession for switches per se including for micro switches and reed switches having a rating upto specified limits. The goods imported as it is are not described as switches and at best these can be taken to have switching mechanism incorporated in it for performing switching function alongwith other control function. The notification benefit can be given in respect of items which answer to the description 'switches'. The item imported as discussed above performs a number of functions and switching is done as a part of those functions.

Chapter Notes in the Customs Tariff Act are part of the Act itself.

They are intended to provide mechanism for resolving controversy regarding classification of goods. The Customs Tariff Act, 1975, itself lays down elaborate rules of interpretation of First Schedule and classification of goods therein. These rules, in the form of principles, are laid down in the beginning of the First Schedule itself as well as in each Chapter. Every heading therefore, has to be interpreted in the light of the relevant principles of interpretation, section notes and chapter notes. All the relevant rules of the interpretation in the import tariff are to be applied for classification of goods.

Since the main or the principal entrydeals with electric lighting fittings in the households, the switches and dippers manufactured by the respondent for exclusive use in motor vehicles cannot be said to be covered in the aforesaid entry.

8. We have heard both sides. Although the appellants have contended that the items imported by them could be used elsewhere in other machines, the documentary evidence before us clearly suggests that what was imported by them is a specific part for which even code No. has been assigned to distinguish it from the rest. Nowhere in their declaration neither in the letter dated 16-6-2003 nor in their documents filed before the Customs (for example bills of entry, invoices etc.) the appellants had raised this point. At this stage we have only an option to examine the sample of the item shown by the Id.

Counsel. It is a sophisticated item with multiple function. We notice that by adding or deleting certain functional role, this apparatus or assembly could be used elsewhere too. But what we have to consider here is whether the imported items per se is a part or otherwise. After examining the sample before us, we are of the view that the subject item is correctly classifiable under Chapter 8431.49,90 and the appellants would not be entitled for the exemption sought by them.

Accordingly, the appeal is dismissed.