

In Re: Sony India (P) Ltd.

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Court : Authority for Advance Rulings

Decided On : Apr-15-2004

Reported in : (2004)(167)ELT28AAR

Judge : S S Quadri, K Chaturvedi, S Pal

Appellant : In Re: Sony India (P) Ltd.

Judgement :

Syed Shah Mohammed Quadri, J. (Chairman), K.N. Chaturvedi and Somnath Pal, Members For Appellant/Petitioner/Plaintiff: V. Lakshmikumaran, R. Parthasarthy, Advs. and Puneet Gupta, Sr. Engineer For Respondents/Defendant: P.K. Haldar, Deputy Commissioner, Sanjay Sharma and R.K. Jindal, AppraisersDunlop India Ltd. v. Union of India and Ors., 1983 (13) E.L.T. 1566 (S.C.), 1976 (2) SCC 241; Hico Products Ltd. v. Collector of Central Excise, 1994 (71) E.L.T. 339 (S.C.); Bombay Chemical Pvt. Ltd. v. Collector of Central Excise, Bombay, 1995 (77) E.L.T. 3 (S.C.); Rajasthan Spinning & Weaving Mills Ltd. v. Collector of Central Excise, Jaipur, H.M.M. Ltd. v. Collector of Central Excise, New Delhi, Pappu Sweets and Biscuits and Anr. v. Commissioner of Trade Tax, U.P. Lucknow, 1998 (7) SCC 228 1. The applicant, M/s. Sony (India) Private Limited, filed this application under Section 28H of the Customs Act, 1962 (for short "the Act") seeking advance ruling of the authority on the following question of law :- "Whether the concessional rate of customs duty of 5% would be applicable to the Panel AG Assembly in terms of Sl. No. 110 of Notification No. 25/99-Cus., dated 28-2-99, as amended." 2. The applicant is a wholly owned subsidiary of Sony Corporation,

Japan. It proposes to manufacture coloured picture tubes, cathode ray tubes, (for short CRT) based on patented Trinitron Technology. It is stated that the components of CRT are as follows :- (a) Funnel, which is a glass item having the shape of the color picture tube; (b) Panel, which is also a glass shell item which is assembled in front of the funnel; (c) FAG and Frame. It is a metal item with a special coating based on Trinitron Technology. The frame is made of metal; and Out of these components, the applicant intends to procure (a) in India and import into India (b), (c) and (d); (b) and (c) are proposed to be imported in blended form termed as Panel AG Assembly (for short PAGA).

The process of manufacturing CRT involves sealing the electron gun, (d), to the funnel (a) which will thereafter be fixed to PAGA. The applicant claims that PAGA is covered by Sl. No. 110 of the aforementioned Notification No. 25/99-Cus., dated 28-2-99 as such duty is leviable on it only at the concessional rate specified therein. We are informed at the bar that the specified concessional rate of duty has since been reduced to "nil". The claim of the applicant is opposed by the Commissioner of Customs (I & G). It is stated by the Revenue that parts (b) and (c) are deliberately clubbed in the form of PAGA to circumvent the liability of payment of higher duty on part (b) which is a glass part. The process of assembling of two parts - a glass part and a metal part - is quite simple and they are assembled to lay claim erroneously that the composite assembly is dutiable only as a non-glass part. PAGA it is stated, is essentially a glass part and so the attempt is to avail the concessional rate of duty indirectly as indeed the benefit of the notification is not applicable to the glass part directly.

3. Mr. V. Laxmikumaran, learned Advocate appearing for the applicant, contends that part (b) - a glass part is liable to duty under Chapter 70 under Heading 70.11 and part (c) is dutiable under Heading 85.40 but in the form of assembly, PAGA is liable to duty under Heading 8540.91 as it ceases to be a glass part and therefore the concessional rate of duty under Sl. No. 110 of the notification would apply. He relied upon the judgment of the Supreme Court in *Dunlop India Ltd. v. Union of India and Ors.* [1983 (13) E.L.T. 1566 (S.C.) = 1976 (2) SCC 241] in support of his contention that the form of goods in which it is imported is a relevant factor for purposes of classification. The learned Counsel has taken us through various

notifications of the earlier years to impress upon us that there has been successive decrease in the rate of duty on the glass parts and ultimately in the notification under consideration, list "C" is omitted as the concessional rate of duty and the tariff rate are the same. From this, he would like us to infer that the benefit of concessional rate of duty under the notification will apply to PAGA. He has also relied upon the Explanatory Notes to the Chapters 70, 84 and 85. It is urged by the Revenue that the assembly is essentially a glass part and once the glass element is taken out there remains nothing in the assembly. It is submitted that though the assembly - PAGA would be liable to the Customs duty under Chapter 85, the same is not covered under the notification so as to avail the benefit under Sl. No. 110 of the notification.

4. To appreciate the rival contentions of the parties, it would be apt to read the notification, insofar as it is relevant, here : Notification No. 25/99-Cus., dated 28-2-1999 Concessional rate of duty on goods imported for the manufacture of excisable goods. - In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods specified in column (3) of Table below, and falling under the Chapters of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) specified in the corresponding entry in column (2) of the said Table, when imported into India for use in the manufacture of the finished goods specified in the corresponding entry in column (4) of the said Table, from so much of that portion of the duty of customs leviable thereon which is specified in the said First Schedule, as in excess of the amount calculated at the rate of, - (b) 5% ad valorem in the case the imported goods specified in List B; Provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996.

5. A perusal of the portion of the notification, quoted above, shows that the Central Government, being satisfied that it is necessary in the public interest so to do, has exempted goods specified in column (3) of the Table falling under the Chapters of the First Schedule to the Customs Tariff Act, (for short "the Tariff Act") specified in the corresponding entry in column (2) of the said Table when imported into India

for use in the manufacture of finished goods specified in the corresponding entry in column (4) of the said Table, from so much of that portion of the duty of customs leviable thereon which is specified in the said First Schedule, as is in excess of the amount calculated at the rate of (a) "nil" in the case of the imported goods specified in list A and (b) "5%" ad valorem in the case of imported goods specified in list B. Here we are concerned with the Sl. No. 110 of list A of the notification which is in respect of "parts of Cathode Ray Tubes (other than glass parts)" specified in the Chapter 85 of the First Schedule to the Tariff Act, when imported into India provided they are used in the manufacture of Cathode Ray Tubes. It is not disputed that the parts of Cathode Ray Tubes proposed to be imported, are meant for use in the manufacture of Cathode Ray Tubes in India. The germane question, however, is whether PAGA would answer the description of "parts of Cathode Ray Tubes (other than glass parts)" in Sl. No. 110. It is a common ground that parts (a) and (b) are glass parts and part (c) is a metal part of CRT. Therefore, parts (a) and (b), the glass parts of CRT, are not covered by Sl. No. 110 of the notification and are dutiable under Chapter 70 whereas part (c) a metal part of CRT, is dutiable under Heading 8540. The question will then boil down to : What would be the position of PAGA - combination of parts (b) and (c) - a glass part with a metal part - in regard to applicability of concessional rate of duty under the Sl. No. 110 of the notification.

6. Mr. Lakshmikumaran, argues that the history of the aforesaid notification, as is evident from notifications issued between 1995-96 and 1999-2000 would support that the concessional rate of duty applies to PAGA. To examine the contention we have carefully gone through the said notifications, tariff rates and the concessional rates. It is noticed that when the effective rate of 30% was applicable to glass parts of CRT (excluding neck or reneck tubes), a concessional rate of 15% was granted to parts of CRT other than glass parts falling under Chapter 85; in 1996-97 and 1997-98 the glass parts of CRT were dutiable at the rate of 25% but the rate of duty on the non-glass parts was 10%; from 1998-99 to 8-1-2004 the duty on glass parts was retained @ 25% but on the non-glass parts it was reduced to 5%. On 9-1-94 the concessional duty on the glass parts of CRT was reduced to 20% whereas on non-glass parts it was reduced to "Nil". In as much the effective rate of duty on the glass parts of CRT was the same in the Tariff Act as the concessional

rate, list (C) was omitted from the last mentioned notification. From the above discussion, it is difficult to conclude that the history of the notification supports the contention that PAGA is dutiable at the concessional rate under the notification.

7. The next contention of the learned Counsel is that the HSN Explanatory Note for Heading 70.11 covers glass envelopes for electric lamps, CRT etc. (without fittings); like a glass envelope for ordinary 100 watts lamp with aluminum connection fitted which would be classified as a bulb under Heading 85.39 so on the same analogy the glass panel when integrated with AG Assembly and coated with RGB phosphor coating ceases to be a glass envelope simpliciter and becomes a part of CRT classifiable under 8540.91. The argument proceeds that once the classification of imported PAGA is under Chapter 85, the benefit of notification would automatically follow and that the expression "other than glass parts" used in Sl. No. 110 is to distinguish it from the glass envelopes, which are also parts of CRT falling under Chapter 70 and is by way of abundant caution though not required strictly.

8. The validity of the contention in regard to classification of PAGA need not be examined as the Revenue has conceded that PAGA is classifiable under Chapter 85.

9. Even on the assumption that PAGA falls under Chapter 85, it is not possible to hold that the benefit of the notification is automatic. To claim the benefit of the notification, the parts of CRT must be classifiable under Chapter 85 but all the parts of CRT falling under that Chapter will not ipso facto (by reason of that fact alone) enjoy the benefit of concessional rate of duty under the notification unless they answer the description of "parts of CRT (other than the glass parts)" in Sl. No. 110 of the notification.

10. The law in regard to interpretation of exemption notification is well settled. An exemption has to be construed strictly but reasonably.

There is no scope of extending the meaning of the words and expressions used in the notification on the basis of analogy or on equitable consideration; there is also no scope for discerning the supposed intention and placing a purposeful

construction to bring in goods within the meaning of the word or the expression employed in the notification.

1. Hico Products Ltd. v. Collector of Central Excise, 1994 (71) E.L.T. 339 (S.C.) Bombay Chemical Pvt. Ltd. v. Collector of Central Excise, Bombay, 1995 (77) E.L.T. 3 (S.C.). Rajasthan Spinning & Weaving Mills Ltd. v. Collector of Central Excise, Jaipur, H.M.M. Ltd. v. Collector of Central Excise, New Delhi, 1996 (87) E.L.T. 593 (S.C.). Pappu Sweets and Biscuits and Anr. v. Commissioner of Trade Tax, U.P. Lucknow, 11. Against Sl. No. 110, in the column of description of the goods, is noted "parts of CRT (other than glass parts)". It has already been noted above that there are main 4 parts of CRT; Parts (a) and (b) are glass parts and part (c) a non-glass - a metal part and (d) electron gun. We have no doubt that the notification deals with these and other parts of CRT (other than glass parts) and not with the combination of two or more parts. While extending the benefit of concessional rate of duty to non-glass parts, it excludes the glass parts. Though it may be true that the glass parts and non-glass parts when combined would equally form a part of CRT it cannot certainly be said to be a part of CRT other than a glass part. On plain reading of Sl. No. 110, it is not possible to construe it as including combination of two or more parts of CRT. In our view, no parallel can be drawn with part (d) electron gun, for electron gun by itself is a component of CRT and is a separate identifiable commercial goods as a part of CRT and clearly it falls under Heading 8540.91. There can be no dispute that the parts of a part are also parts of machine but it would be trite argument that the concession would then be applicable only to individual minor items like screw etc. as they are not known as parts of CRT. We have already pointed out that the notification extends the benefit only to non-glass parts and it is not available to an assembly of non-glass parts and glass parts. If the contention of the applicant is accepted it would result in an anomalous situation giving scope to circumventing the higher rate of duty leviable on the glass parts by clubbing it with the metal part so as to make the assembly dutiable as applicable on metal parts. Obviously such cannot be the interpretation of exemption notification. Having given anxious consideration, we are of the view that the benefit of exemption notification is available to such individual parts as are generally accepted in common parlance and dealt with commercially in the market, and not to combination of two or more

parts like PAGA which are not bought and sold ordinarily in the market as parts of CRT by those dealing with parts of CRT.¹² For these reasons, we rule on the aforementioned question that the concessional rate of customs duty 5% (now nil) would not be applicable to panel AG Assembly in terms of Sl. No. 110 of the Notification No.25/99-Cus., dated 28-2-99 as amended.

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