

Poona Radiators Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-15-1990

Reported in : (1990)(48)ELT93TriDel

Appellant : Poona Radiators

Respondent : Collector of Central Excise

Judgement :

1. The classification has been disputed in respect of Radiator Assys and Radiator Cores which are for supply to Indian Railways, as parts of railway locomotives which are sought to be classified under Chapter Heading 86.07 of the Central Excise Tariff by the appellant and under 84.09 by the Department.

2. The classification prior to 1-3-1986 was under T.I. 68. Thereafter from 1st March 1986 the Assistant Collector approved the classification of the products under Chapter Heading 86.07 as parts of Railway or Tramway Locomotives or rolling stock. In the classification list so filed they themselves drew the distinction between radiator falling under 84.09 and those radiators assembly and Cores for Railway or Tramway Locomotives or rolling stock under 86.07. The show cause notices were issued for period from July 1987 to November 1987, for a demand of Rs. 4,75,945.00, revising the classification under Heading 84.09. The Assistant Collector confirmed the demand and the Collector (Appeals) upheld the order and hence this appeal.

3. Shri A. Hidayatullah, Senior Advocate appearing for the appellant reiterated the above facts. He said that the radiator assembly and radiator cores manufactured by the appellant are of different sizes and are of a special design and specifications as per orders of the Indian Railways. These are supplied to the Indian Railways, Diesel Locomotives Works, Varanasi. These being parts of Railway Locomotives they have to be classified under sub-heading No. 8607.00 of the Central Excise Tariff.

4. He raised the legal issue that the classification list was approved on 22nd April 1987 and thereafter it cannot be reviewed.

5. Other manufacturers like M/s. Banco Products (India) Ltd. were clearing radiators to railways, classifying the same under 86.07. The copies of classification list and gate passes were referred and pleaded that the appellant was discriminated. He referred to the Tribunal's decision in 1985 (22) E.L.T. 504. Guest Keen Williams Ltd., Howrah v. Collector of Central Excise, Calcutta in support of his contention, where it has been held - "Exemption - Denial thereof to appellant when being given to others, even in the same Collectorate is discriminatory".

6. He further contended that the Collector (Appeals) had erred in ignoring the test of trade understanding. He referred to the letter of the Diesel Locomotive Works Varanasi dated 30th May 1988 which clearly indicates that the radiators are fitted on Diesel Electric Locomotives and not on the power pack (I.C. engines). Therefore the Collector's (Appeals) finding that radiator of the diesel locomotives is used with the I.C. engine of the Locomotive and hence holding the classification under 84.09 as applicable, was incorrect. He produced the literature to prove that the design of the radiator was specifically for fitment to the Locomotives and not to the Diesel engine.

7. His next point of contention was the classification list which was accepted for two years was sought to be changed, thereby putting the appellant to hardship and out of business. There should be no demand for the past period where the classification was duly approved, but should only be prospective. He cited the Tribunal decision in 1983 (13) E.L.T. 1113 - TISCO v. Collector of Customs, Calcutta "Classification of goods cannot be abruptly changed without any cogent

reasons". Goods classified as forged products under a specific Tariff Item for a number of years cannot be classified, suddenly under another Tariff Item without any cogent reason which are absolutely essential to explain such change over. Abrupt change in classification without assigning any reason thereof is unjustified, unsustainable in law and therefore liable to be quashed".

8. 1989 (40) E.L.T. 71 - Soma Plumbing Fixtures Ltd. v. Collector of Central Excise, Meerut. Tribunal decision - "Classification cannot be changed for the same period".

9. Arguing on the issues raised, Shri K.D. Tayal, learned SDR stated that Heading 84.09 was specific. Radiators used in engines will fall under that heading. He referred to Section XVI, Note 1 K. The Section XVI does not cover articles of Section XVII. Also Chapter 86 Note 2 which applies to the items specified and also Section XVII Note 2. The expression 'parts' and parts and accessories do not apply to the articles mentioned and 2(e).

10. He further stated that a specific tariff heading should be preferred to a general heading. He cited the decision of the Supreme Court 1983 (13) E.L.T. 1566 (S.C.) - Dunlop India Ltd. & Madras Rubber Factory Ltd. v. Union of India and Others - "Classification of goods - Articles classifiable under specific item cannot be classified under residuary item - when an article is by all standards classifiable under a specific item in the Tariff Schedule it would be against the very principle of classification to deny it the parentage and consign its residuary item". He maintained that the radiator was part of the engine, as against the claim, that it was a more general view that it was a part of a Locomotive. He referred to a letter from the Dy. Chief Machine Engineer, Indian Railways, Diesel Locomotive Works, Varanasi, dated 03-12-1987, with diagram, was also explained to indicate that the radiator on the Diesel Locomotive manufactured by DLW were used in the cooling water in unit. The function of radiator was to cool the water which picks up heat from the diesel engine. The cooling water flows in closed in unit and radiator is part and parcel of this unit. Rule 3 of the interpretative rules for specific description, gaining preference to general description, was also referred to.

11. The following case laws were cited to be in favour of the departments case. Indian Textile Paper Tube Co. Ltd. v. C.C.E., Madurai - Classification can be changed any time subsequent to its approval.

(ii) 1985 (20) ELT 166 - M/s. Indian Polymers, Hyderabad v. C.C.E., Hyderabad, para-22 for classification to be changed subsequently.

12. Replying to the contentions raised by the Ld. S.D.R., Shri Hidayatullah, Ld. Advocate, clarified that the only Section Note relevant was 2(e) of Section XVII. The radiator assembly was claimed to be a part of the Railway Locomotive and not part of 4 I.C. Engine.

Therefore, Note 2(e) is not relevant in this case.

13. The issue involved has been examined. In considering the submissions put forth in their grounds of appeal, the appellants submit that as per the alphabetical commodity index to the Harmonized Code on which the Central Excise Tariff Schedule is based with effect from 28-02-1986, the classification code for radiators is Radiators(s).

"Radiators and radiator cowlings for motor vehicles, cabins, cars, lorries of 87.01 to 87.05 and 8708.91". As such from the above index the products under dispute being parts of radiators used in diesel electro Locomotives cannot be classified under 84.09 of the Central Excise Tariff and even radiators and parts meant for motor vehicles i.e. buses, cars etc. which are classifiable under heading 87.08. As such the classification of radiator parts meant for diesel locomotives for rail should be classified under 86.07. Moreover, under the Customs Tariff the classification of radiators is under 87.08. specifically the Central Excise Tariff and Customs Tariff are pari metered with each other and the heading in the Customs Tariff relating to radiators falling under Chapter 87 should be inferred as falling under the Chapter relating to vehicle concerned. This read with Chapter Note-3 of Section-XVII will make it clear that radiators assembly and radiator core used as parts in Railway Locomotives will fall under heading 86.07.

14. For the purpose of having a write up on the subject, the appellants were asked to give the same, which gives the main features of the radiator assembly and radiator cores manufactured by them, which is reproduced :- "Radiator Assys. and Radiator Cores have different applications and are used in different systems of machinery, which are both movable and immovable. The kind and design of the Radiator Assy, and Radiator Core is dependent on the nature of the application as well as the location of the same in the movable or immovable equipment.

The Appellants manufacture heavy duty industrial Radiators, which are complete with a fan shroud. These are built for industrial engine application and are used in diesel generating sets (gensets), which consist of an internal combustion engine (being the prime mover) and the generator. These generating sets are fitted in industrial locations firmly to the ground or are fitted inside buildings. The Radiator Assy, or Radiator Core is a part of internal combustion engine in such an application because it is designed to fit on an internal combustion engine of known horse power and RPM. Radiator Assys. and Radiator Cores are also manufactured as a part of heavy duty air compressors. These are normally located on to the internal combustion engine constituting a part of the air compressor. These Radiator Assys. and Radiator Cores are specific to the internal combustion engine for the reasons above and hence are considered as a part of the internal combustion engine.

The Appellants also manufacture Radiator Assys. and Radiator Cores for fitment into diesel locomotives and they are manufactured as per the designs and specifications of Diesel Locomotive Works or Indian Railways. These Radiator Assys. and Radiator Cores are fitted as a panel on the side of the diesel locomotive and are designed for location on the diesel locomotive body itself. The internal combustion engine is housed within the body of the locomotive but at a different location. The Radiator Assy, and Radiator Cores are not designed for a specific internal combustion engine and the Appellants are not even aware of the kind of internal combustion engine being used nor its horse power or its rating/RPM. The internal combustion engines are chosen by Diesel Locomotive Works or Indian Railways to be fitted to the kind of diesel locomotive design fabricated by them. By virtue of these specifications and the location on the diesel

locomotive, such Radiator Assy, and Radiator Cores are understood commercially and by the Appellants and Diesel Locomotive Works and Indian Railways as parts of diesel locomotives." In the said letter of the Dy. Chief Engineer dt. 03-12-1987, the radiators on the diesel locomotives manufactured by the DLW are used in the cooling water circuit. The function of radiator is to cool the main which picks up heat from the diesel engine. The cooling water flows in closed circuit and radiator is part and parcel of this circuit. In the Mc Graw Hill Dictionary "Radiator Temperature Drop" is defined as "in internal combustion engine, the difference in temperature of the coolant liquid entering and leaving the radiator". In effect, the function of the radiator is to cool the water/coolant liquid. The issue now is whether the radiator and parts are to be classified under heading relating to internal combustion engine and parts under Heading 84.09 or when meant for Railway diesel engines under 8607. The appellants have drawn attention to Chapter Note-3 of Section-XVII which reads as :- "References in Chapters 86 to 88 to 'parts' or 'accessories' do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory." The H.S.N. Explanatory Notes under heading 86.07 clearly states that the heading covers parts of railway or Tramway Locomotives or rolling stock, provided the parts fulfil both the following conditions :- (i) They must be identifiable as being suitable for one holding or principally with the above-mentioned vehicles.

(ii) They must not be excluded by the provisions of the notice to Section-XVII. The condition (i) above is fulfilled, as for condition (ii), Section-XVII, Note-2 (e) reads as :- "Machines and apparatus of heading Nos. 84.01 to 84.79, and parts thereof; articles of heading No. 84.81 or 84.82 and, provided they constitute integral parts of engines or motors, articles of heading No. 84.83." 15. The issue is whether radiator assembly and core which are parts are parts of radiator falling under the respective heading 84.07 or 84.08.

From the letter dated 03-12-1987 with diagram and the write up given by the appellant, the radiator is found to be located with the locomotive as per the design and not with the diesel engine. Therefore, they do not appear to be parts of the

diesel engine and as far as the radiators for the locomotives are concerned, even though they are meant for cooling the water which picks up heat from the diesel engine, the location is with the locomotives, therefore, being principally used in the railway locomotives, which is more specific rather than the heading 84.09 the classification for the railway locomotive radiators under heading 86.07 is preferable and appropriate. This will also be in conformity with the classification adopted by the manufacturers of radiators by M/s. Banco Products, Baroda, where parts of Railway or Tramway Locomotives or rolling stock - radiators, are classified under 86.07.

16. It is relevant to point out that the appellants have themselves classified their radiators suitable for use solely or principally with the engines of Heading 84.07 or 84.08, under 84.09. The classification of these items in the classification list has not been disputed. Their appeal is only with regard to the radiators assembly and radiator core, as being parts of Railway or Tramway locomotives, which is found to be acceptable in view of the foregoing conclusions. In view of the appeal being allowed, the other issues on maintainability of the revised classification after approval of the earlier classification list is not gone into as the appellants appeal on the main issue of classification stands decided in their favour. In effect, therefore, the appeal is allowed.

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