

Telco Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-23-1990

Reported in : (1990)LC129Tri(Delhi)

Appellant : Telco

Respondent : Collector of Customs

Judgement :

1. Since the issue involved in all the subject appeals is the same, a common order is being issued.

2. Question involved in these appeals is whether the goods described as non-ferrous forgings for synchrocone imported by M/s. TELCO Ltd. are classifiable under Tariff Heading 74.03(1) or as automobile parts under Tariff Heading 87.04/06(1) while TELCO claims the assessment as shapes and sections of copper not elsewhere specified under Tariff Heading 74.03(1). The department has assessed the goods under 87.04/06(1) as parts of motor vehicles not elsewhere specified.

2.1 The classification of the imported goods turns upon the Interpretation Rule 2(a) which is reproduced as below :- "2(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as imported, 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 by virtue of this rule, imported unassembled or

disassembled." 3. There appears to be a substantial conflict of opinion at the lower appellate levels on this issue as is apparent from the appeals filed by TELCO and filed by the department. Some Appellate Collectors/Collectors (Appeals) have held that the product is classifiable as automobile parts under Tariff Heading 87.04/06(1) whereas some others have held that the said product is classifiable under Tariff Heading 74.03(1).

3.1 Sole question to be resolved in these cases is whether the product as imported by TELCO has acquired the essential character of an automobile part. If it has acquired the character of automobile part it would be classifiable under Tariff Heading 87.04/06 (1). If it has not then undoubtedly the product would be classifiable under Tariff Heading 74.03 (1) CTA 1975.

3.2 The original adjudicating authorities of the department have held that if a forging has a definite shape and has been manufactured in a form which could be easily identified with a finished article and only certain processing or machining operations are required to complete the same into a finished article this would be treated as a finished article.

The learned adjudicating authority, Collector of Customs, Bombay in one of the impugned orders dated 6-7-1982 has laid down a test as to what is meant by the expression 'essential character'. He states as follows :- "An important aspect is whether the semi-finished stage has reached a point of no return in the sense that it could be finished only into a particular complete article. In my view the number of operations to be carried out for converting into the finished article and the cost involved is of no consideration in determining whether it has the essential character of the finished article. It is purely a question of physical identification". Applying the above test, the led. Collector held the imported goods as having acquired the essential character of the automobile part which is converted into by the appellants after some operations at their works in India.

On the other hand, we have an opinion of one of the Appellate Collectors late Shri M.G. Vaidya and quoted in one of the impugned orders dated 15-1-1982 (subject matter of A. No. 1555/82) as follows :- "Customs have classified by taking recourse to Rule 2(a). It is mandatory. It is not a permissive rule offering an option

to an importer or to the Customs. The principle of this rule has to be applied to every single article. Now the question is what exactly is meant by the essential character of the complete or finished article. One has to identify from the incomplete or unfinished article certain processes or machining impart essential operational features of a finished article? Any educated citizen who has an inquiring mind and observant eyes will easily be able to identify almost every rough forging as the starting point of a finished article. If such ability to identify were to be treated as essential character then nothing will be left to be assessed as rough forgings/shapes. One must therefore accept that essential character is not the same thing as ability to identify a rough forging as the starting material required for the making of a complete and finished article."

4. The question of interpretation of Rule 2(a) and of determining the essential character of an article as imported has also come up for consideration in a number of decisions before the Tribunal. There had been a conflict of decision on this point in different Benches of the Tribunal as well. The matter had been, therefore, referred to a Larger Bench consisting of 5 Members of the Tribunal in the case of BHEL Ltd. v. CCE, Madras [1987

(28) ELT 545]. Decision of the Tribunal, in short, has been that no general principles can be laid down as to how and in what circumstances Rule 2(a) could be pressed into service for assessment of the imported unfinished article. To appreciate the Tribunal's decision on interpretation of Rule 2(a) of the CTA 1975 para 8 of the said Report is reproduced below :- "8. It, therefore, appears that in order to apply the provisions of Rule 2 (a) it has to be seen

(1) whether the imported product had attained the approximate shape or outline of the finished article;

(2) whether the said imported article can only be used for completion into the finished article and

(3) these would have to be determined with reference to the nature of the material, its bulk, quantity, weight or value. This very enumeration would therefore establish that no general principles can be laid down as to how and in what circumstances

Rule 2(a) could be pressed into service for assessment of the imported unfinished article. In each case the factors enumerated above would have to be taken into consideration individually, and then collectively, to determine whether the imported article had attained the approximate shape or outline of the finished article and could be used only for completion into the finished article."

5. We are, therefore, of the view, as held by the Larger Bench of the Tribunal that each case will have to be decided on its facts and circumstances to determine whether an imported article has acquired the essential character of finished article or not before it can be assessed under Tariff Heading relevant for the finished article.

5.1 We have, therefore, to set out some of the salient undisputed facts which are necessary for determining the classification of the product under consideration. Undisputed facts, as set out in the order-in-original (one of the impugned orders dated 16-7-1982) passed by the Collector of Customs, Bombay are reproduced below :- "He (Shri N.K. Malhotra, Representative of TELCO) pointed out that the goods imported are non-ferrous forgings for the manufacture of synchrocones which are used in the gear box of motor vehicles as components. The forgings have been made from aluminium alloy material having a definite composition and made to specifications.

The forgings imported are subject to a large number of machining and other processes before they are manufactured into synchrocones.

Other operations are taper-turning, chamfering, grooving and finish turning, cutting threads on taper face, spot finishing, counter sinking and slitting spherical holes and slots, drilling or holes on cone side and finally shot-blasting with silicone carbide and cleaning of cone portion. With reference to the samples produced, he pointed out that the imported rough forging is much larger in size than the finished product. He also pointed out that in the imported forging the cutting of the teeth is not complete inasmuch as the material between the teeth have not been removed and the teeth themselves require final finishing according to specification. He also pointed out there were no threads on taper face which have to be cut. Further operations required are slitting holes and slots which have not been done on the

imported forgings. The cone side require drilling of holes. Above all shot-blasting with silicone carbide is required for the synchrocone to perform the, clutch function. Shri Malhotra's contention is that the synchrocone acts as gear box as well as clutch and this function cannot be performed by the goods in the form in which they have been imported." 6. In view of the aforesaid submissions, learned advocate for TELCO explained and elaborated the above submissions with the help of two samples (one each for the goods as imported and of the product as finally converted by them at their Works in India.) He has also relied upon a few decisions of the Tribunal which are as follows :- (1) 1984 (16) ELT 613 - Tribunal - para 13 [CC, Bombay v. Anti-Friction Corporation, Lonawala].New Standard Engg. Co. Ltd., Bombay v. C.C., Bombay The learned advocate also submitted that the extensive nature of the operations carried out by TELCO in their works in India can be gauged from the fact that about 34% of the material is lost in the process of machining of the rough forgings. The magnitude of the change, he urges, can also be judged by the fact that whereas the forgings cost GIF Rs. 32 per pc., the same item when imported in the finished condition i.e.

synchrocone costs as much as CIF Rs. 80/- per pc. i.e. 2 /2 times the price of the forgings.

6.1 He further relies on a Trade Notice of the Vadodara Collectorate No. MP/31/87 dated 4-3-1987 defining the scope of essential character in respect of iron and steel castings. Relevant para of the Trade Notice is given below :- "In this connection, Board has clarified that the important conditions to be satisfied connecting interpretative Rule 2(a) for classification of incomplete and finished articles are that the articles must have the essential character of the complete or the finished articles which could, inter alia, be judged with reference to the functional aspect, physical and degree of completion of the product. Viewed in this context, castings in which only surface defects or excess material have been removed may not acquire a stage at which it must be said to have the -essential character of the complete or finished machinery part. However, as per interpretative Rule 1, the classification shall be determined according to the terms of the headings, and in this case there is a specific Heading 73.07 covering all iron and steel castings not elsewhere specified in Chapter 72 or 73.

Taking into account the above point, the Board is of the view that operations, such as those listed below, which do not alter the essential character of the castings, would not be enough to merit the classification of such castings as machinery parts under Chapter 84 or 85 as the case may be.

Such castings would more appropriately be classified under Heading 73.07 of the Act." 6.2 On the analogy of the aforesaid classification, the Ld. advocate has submitted that the machining undertaken at the pre-importation stage in the forging is only to remove surface defects or excess material. These processes at pre-importation stage would not alter the character of the forging so as to take it within the scope of automobile part.

7. Learned SDR, Shri K.D. Tayal arguing for the Revenue has submitted that the matter has been considered in detail by a Larger Bench of the Tribunal in BHEL case mentioned supra. He relies in particular on paras 9 and 12 of the said Report. Para 9, according to the Ld. S.D.R. rules out the principle of addition to the cost of the imported product for determining whether the imported product has acquired the character of the finished article or not. He relies on the following observations of the Tribunal in the said para :- "Taking into consideration all the above considerations it appears to us that to lay down a general rule, that the applicability of rule 2(a) would depend on the percentage of cost of post-importation operation as compare to the c.i.f. value of the import, would not be a proper criterion." Reliance on para 12 of the said Report has been placed by the Ld.

S.D.R. on the ground that some of the operations carried out by TELCO in that case cost them only 1.5% of the c.i.f. cost. Some of the operations, submits the Ld. SDR, in the instant case are of the same nature as were undertaken by the appellant in BHEL's case mentioned supra. He submits that all operations are minor in nature. Ld. SDR also submits that the goods imported by the TELCO have been assigned specific part numbers and are of definite specifications. Therefore, they should be treated as finished articles classifiable under Heading 87.04/06(1). Ld. S.D.R. also places reliance on Tribunal's judgments (1) No. 995/87-B2 dated 27-5-87 [Sri Sri Rama Vilas Service Ltd., Madras v. C.C.E., Madras and (2) 1983 (12) ELT 410 [BHEL v. C.C.E., Bombay].

7.1 He further submits that Ld. advocate for TELCO's reliance on dismissal of appeal by the Collector of Customs, Bombay in the Supreme Court against the judgment of the Tribunal in the case of Antifriction Bearing Corporation, Lonawala mentioned supra does not matter much. The judgment of the Supreme Court is cryptic namely: "Civil appeals are dismissed" (Civil Appeals No. 2079 - /1985). For this proposition, learned SDR relies on 1989 (40) ELT 226-Para 5 (Roop Diamonds v. Union of India). It holds that "the mere rejection of the special leave petition... could not by itself be construed as the imprimatur of this Court on the correctness of decisions sought to be appealed against...." 8. In reply, the learned advocate for TELCO has stated that the part nos. assigned carry the sign 'R' which means raw or rough. This number was assigned by TELCO to the drawings supplied to the supplier/manufacturer in the foreign country for the purpose of identification of the forgings. Assignment of this number does not mean that the goods imported are finished articles. He further submits that the true ratio of the Larger Bench judgment of the Tribunal [1987 (28) ELT 545] is that no general principles can be laid down for determining whether the essential character of the complete article vis-a-vis an incomplete article. He reiterated that the said judgment of the Larger Bench did not take into account the Tribunal's judgment in the case of Antifriction Bearing Corporation Ltd. In view of the seal of approval of the Supreme Court to Antifriction's judgment of the Tribunal, that judgment becomes more binding than the judgment of the Larger Bench of the Tribunal in the case of BHEL.

9. We have carefully considered the pleas advanced on both sides. We have already held that the true ratio of the Larger Bench of the Tribunal is that no general principles for determination of essential character of an article in terms of interpretative rule 2 (a) can be laid down. Facts and circumstances of each article have to be looked into to grasp the essential character of that article. Therefore, the citations made by either side in respect of specific articles would not be of relevance in determining the essential character of synchrocones for the purpose of assessment of the imported forgings in the instant case.

9.1 We find that there is nothing in the judgment of the Tribunal in 1984 (16) ELT 613 which renders the judgment of the Larger Bench of the Tribunal reported in

1987 (28) ELT 545, redundant. The judgment in the case of Antifriction Bearing Corporation has been dealt with purely on the facts of that case and no attempt has been made to define the scope of interpretative Rule 2(a) of the CTA, 1975.

9.2 Having regard to the nature of extensive operations carried out by TELCO, as set out above, it cannot be said that the imported product has acquired the essential character of the automobile part synchrocones which is ultimately manufactured by the appellants at their Works in India as explained by TELCO in their appeal. The finished synchrocone has a dual role and acts as a clutch and a gear.

Further it is explained as below :- "Firstly, the conical bearing friction area acts as a cone clutch for synchronising the speeds. This area is the one which comes into contact with synchroniser rings in the gear box. This area not only must have the exact dimension and the angular profile, but it must have frictional and wear resistance character as well, which are imparted by machining fine grooves on the conical area and subsequent surface treatment with silicon carbide.

Secondly, the synchrocone has to act as a gear for engagement with shifter sleeves of natural, first, second, third, fourth and the fifth speed gear. The forging as imported has only indentations.

These indentations have to be machined on special purpose machines for obtaining well defined and separated gear teeth with clear profiles. Without this, it is not possible for it to engage with the teeth of shifter sleeves for transmitting the rotary movement of the driving gear to the driver gear." 10. In view of the function of the product synchrocone it cannot be said that the product as imported has acquired the essential character.

11. Apart from the reliance placed by the Ld. advocate for TELCO on a Trade Notice of Vadodara Collectorate which, in turn is apparently based on Board's instructions, it is laid down by the Supreme Court in the case of Atul Glass Inds. Ltd. and Ors. v. CCE [1986 (25) ELT 473 SC] that "the identity of an article is associated with its primary function. It is only logical that it should be so. When a consumer buys an article, he buys it because it performs a specific function for

him.

There is a mental association in the mind of the consumer between the article and the need it supplies in his life. It is the functional character of the article which it identifies in his mind.

12. Therefore, it appears that function of an article is one of the most important criterion for determining the essential character of an article as pointed out by the learned advocate for TELCO that function of synchrocone is to serve the dual purpose of a clutch as well as a gear. This dual purpose cannot be served by the product as imported.

It, therefore, follows that the imported product does not have the essential character of a complete article synchrocone.

12.1 As regards the concept of 'point of no return' laid down by the Collector of Customs, Bombay to determine whether an incomplete or semi-finished article has acquired the essential character, we are of the view that this would lead to anomalies. It is well-known that forgings or castings of specific articles can be completed into finished articles only of which they are forgings or castings. If the test laid down by the Collector of Customs, Bombay is accepted then all castings and forgings would be treated as having reached a point of no return since they could be finished or completed only into the predetermined article. In other words, the Tariff entries relating to forgings or castings would become redundant and they would have all to be assessed, according to the test laid down by the Collector, as components of machinery of which they are forgings or castings.

12.2 In this view of interpretation of Rule 2 (a) the citations given by the learned advocate in support of his case for determining the essential character of other articles as imported would not be relevant to the facts of this case. Similarly, the citations given during the course of hearing by learned SDR in support of his case in respect of the other articles would not be relevant and we do not propose to take into consideration those citations relied upon by other side.

12.3 Having regard to the aforesaid discussion, we are of the view that the imported products in the instant cases are classifiable as 74.03 (1) CTA. Accordingly, the appeals of TELCO are allowed and the appeals of the Revenue are dismissed with consequential relief to TELCO.

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