

**Collector of C. Excise Vs. Lakshmi Automatic Loom Works Ltd.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Feb-22-1994

**Reported in :** (1994)LC160Tri(Delhi)

**Appellant :** Collector of C. Excise

**Respondent :** Lakshmi Automatic Loom Works Ltd.

**Judgement :**

1.1 The respondents herein are engaged in the manufacture of weaving machines as well as parts and accessories of such machines. In the first instance parts and accessories were classified under Tariff Heading 84.48. Later on, the department felt that some of the parts such as shafts and bushes manufactured and cleared by the respondents were classifiable under Heading 84.83. A show cause notice dt.

31-10-1989 was issued by the Superintendent of Central Excise directing the respondents as to why parts and accessories as above should not be reclassified under Tariff Heading 84.83 and why the differential duty of Rs. 16538.38 BED and Rs. 826.92 SED should not be recovered from them Under Section 11A of the Act for the period 6-4-1989 to 31-10-1989.

1.2 The respondents herein urged that the shafts in question do not perform any function of transmission; therefore, they cannot be called transmission shafts. In their case function of shaft is only to connect the different parts. This function, therefore has nothing to do with the description furnished under Heading 84.83.

1.3 With regard to bushes the respondents herein stated that these do not find a place in the description of items under Heading 84.83.

Hence they cannot be classified under the said heading.

1.4 The respondents also submitted that both shafts and bushes are parts of weaving machines specifically designed for their own weaving machines as per the drawings and technical collaboration with a foreign collaborator. These parts are not fit for being used in weaving machines manufactured by others. It was, therefore, submitted that Tariff Heading 84.48 which is specific, inter alia, for parts of weaving machines falling under Heading 84.46 would be applicable to the goods and therefore, there was no need for reclassifying the goods as well as for making any recovery as a result of such reclassification.

\* \* \* \* \* 2. The parties have taken factually the same grounds favourable to them, as have been set out earlier in the orders of the adjudicating authority and the Collector (Appeals), as the case may be.

3. We do not, therefore, consider it necessary to repeat the grounds now taken by either party. It is interesting to note that both the sides are relying on Section Note 2 of Section XVI of the CETA, 1985.

We, therefore, reproduce that Section so as to understand its true purport and scope :- "2. Subject to Note 1 to this Section Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of Heading No. 84.84, 85.44, 85.45, 85.46 or 85.47) are to be classified according to the following rules :- (a) Parts which are goods included in any of the Headings of Chapter 84 or Chapter 85 (other than Heading Nos. 84.85 and 85.48) are in all cases to be classified in their respective headings.

(b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of Heading No. 84.79 or Heading No 85.43) are to be classified with the machines of that kind. However, parts which are equally suitable for use principally with the goods of Heading Nos. 85.17 and 85.25 or 85.28 are to be classified in Heading

No. 85.17.

(c) All other parts are to be classified in Heading No. 84.85 or Heading No. 85.48." We also reproduce Headings 84.48 and 84.83 :- "84.48 Auxiliary machinery for use with machines of Heading Nos. 84.44, 84.48, 84.46 or 84.47 parts and accessories suitable for use, solely or principally with the machines of this Heading or of Heading No. 84.44,84.45, 84.46 or 84.87 (for example, spindles and spindle flyers, card clothing, combs, extruding nipples, shuttles, healds and heald-frames, hosiery needles).

84.83 Transmission shafts (including camshafts and crankshafts) and cranks; bearing housings and plain shaft bearings; gears and gearing, ball screws; gearboxes and other speed changers, pulleys, including pulley blocks; clutches and shaft couplings (including universal joints)." From a plain reading of Section Note 2 of Section XVI, as set out above, it is obvious that parts of machines falling under this Section are to be classified according to the rules set out in (a), (b) & (c) sequentially because of the use of the words "other parts" in section Note 2(b) and "all other parts" in Section Note 2(c).

3.1 Section Note 2(a) states that any parts which are goods included in any of the Headings of Chapter 84 or Chapter 85 (other than Heading No.84.85 and 85.48) are in all cases to be classified in their respective headings. Revenue's contention is that entries of goods mentioned in Tariff Heading 84.83 will take precedence over entries, mentioned in other headings of these two Chapters 84 or 85. It is for this reason that the Revenue contends that shafts and bushes are to be classified under Tariff Heading 84.83.

3.2 Respondents, on the other hand, contend that Tariff Heading 84.48 is specific for parts and accessories suitable for use solely or principally with the machines of this heading or of Heading No. 84.44 to 84.47.

3.3 We have given careful consideration to the contention of both the sides. Tariff Heading 84.83 mentions specific goods whereas Tariff Heading 84.48 also specifically mentions "parts of" certain machines.

Therefore, both are specific entries. Applying the principle contained in Rule 3(c) which states as follows :- (c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration." We would hold that Tariff Heading 84.83 would take precedence over Tariff Heading 84.48 provided the goods under consideration in this case, namely, "shafts" and "Bushes" are covered by the said Heading 84.83.

3.4 It is apparent from the stand of the respondents that the shafts are not transmission shafts which is specifically mentioned in Tariff Heading 84.83. This stand of the respondents has not been rebutted either by the adjudicating authority or by the appellant-Collector. On the other hand, the respondents have clearly stated and the original authority has also clearly found that the shafts in question are essential parts of weaving machines. The shafts, therefore, are classifiable under Tariff Heading 84.48.

3.5 Bushes are not at all mentioned in Tariff Heading 84.83. The department is attempting to assess them by treating them as bearing mentioned in Tariff Heading 84.83, on the basis of function of both bushes and bearings. This is plainly untenable. Bushes and bearings are two different things known in commercial parlance. For this reason, bushes cannot be classified under Tariff Heading 84.83. They would, therefore, be rightly classifiable under Tariff Heading 84.48.

4. In view of the above discussion, we dismiss the appeals of the Revenue with consequential relief to the respondents.

5. Cross objections are not maintainable because the respondents herein got complete relief at the hands of the lower appellate authority.

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