

Collector of Central Excise Vs. Escorts Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-29-1994

Reported in : (1994)(54)LC191Tri(Delhi)

Judge : J T P.C., S Peeran

Appellant : Collector of Central Excise

Respondent : Escorts Ltd.

Judgement :

1.1. Respondents herein are inter alia engaged in the manufacture of certain excisable goods namely gears and shafts. Revenue contends that these goods are classifiable under Tariff Heading 84.83 because these parts are specifically covered under the said Heading and Notes I(k) and 2(a) of Section XVI of the CETA 1985 come into play.

Respondents on the other hand contend that the said goods are covered under Tariff Heading 87.08 as tractor parts. Notes of Section XVI, as mentioned above, do not apply in view of Section Note 2(e) of Section XVII of the CETA, 1985. It may be noted that Chapter 84 falls under Section XVI and Chapter 87 falls under Section XVII of the Tariff.

2. In order to appreciate the above controversy, we may reproduce the relevant Tariff Heading and Section Notes: 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 Heading 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.

8483.00 Transmission shafts (including cam shafts and crank shafts) and cranks; bearing, housings and plain shaft bearings; gears and gearing; ball screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks and shaft couplings (including universal joints).

2. The expression 'parts' and 'parts and accessories' do not apply to the following article whether or not they are identifiable as for the goods of this Section: (e) 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.

8708: Parts and accessories of the motor vehicles of Heading Nos.

87.01 to 87.05.

3. From a plain reading of Section Notes I(k) and 2(a) of Section XVI, it is apparent that Section Note 2(a) is subject to Section Note 1, Section Note I(k) specially states that Section XVI, in which Chapter 84 falls, does not cover articles falling under Section XVII. Question of applying Section Note 2(a) of Section XVI, therefore, arises after recording a finding that Section XVII does not apply to the goods under consideration. We have, therefore, to examine whether Section XVII i.e.

Chapter 87 applies to the goods under consideration.

4. Now Tariff Heading 87.08 applies to 'parts and accessories' of Motor vehicles of Heading Nos. 87.01 to 87.05. It is admitted by both sides that 'shafts' and 'gears' under consideration before us are parts of tractors inasmuch as they are principally used in tractors. No other use of these parts has been brought on record. Ld. SDR, Shri B.K. Singh for the Revenue submits that Section Note 2(e) of Section XVII, already set out above, excludes from the said Section XVII articles

of Heading 84.83 if such articles constitute integral parts of engines or motors.

He submits that 'shafts' and 'gears' under consideration are integral parts of 'engines' of the tractor.

4.1. According to him, definition of 'integral' in relation to 'mechanics' in the Dictionary 'Words & Phrases' (Permanent Edition) Vol. 21A means as follows: Integral, as applied to mechanics, means all of one piece (of metal or wood); as the shaft and base are cast integral.

He submits that 'gears' and shafts directly affect the power of the engine and therefore, they are integral parts of engines. In this connection, he relies on the following extracts from 'Auto Mechanics Fundamentals' (How & Why of the Design, Construction and Operation of Automotive Units) by Martin W Stocket: The average engine would have power enough to operate a car without a transmission provided the car operated on reasonably level roads and maintained sufficient speed. When the car must be started from a standstill, or when attempting to negotiate steep grades, the engine would not provide sufficient power and the car would stall.

Much less torque is required to move a car rolling on level ground than is necessary to drive the same car up a steep hill.

To enable the engine to increase torque to the drive line, it is obvious that a torque multiplier (transmission) is needed.

By using a torque multiplier, it is possible to adapt the available power of the engine to meet changing road and load conditions.

If you (an engine) exerted all your strength (power) and still failed to lift a certain object (drive the car), you could multiply your strength by using a lever and fulcrum.

If you weigh 200 lbs. and get on the lever 5 ft. from the fulcrum, a force of 1,000 ft. lbs. will be exerted. Then, if a weight of 500 lbs. is placed on the other end of the lever 1 ft. from the fulcrum, it would exert a force of 500 ft. lbs. By using a simple

torque converter or multiplier, you can now raise 500 lbs with ease. How much weight could you raise in.

If you weigh 200 lbs. and want to lift 4,000 lbs., you would have to stand 20 ft. from the fulcrum. In order to raise the weight a short distance, it is mandatory that you depress the end of the lever a distance 20 times as much as the distance the weight has been raised.

You will note that as your (engine's) strength (torque) is increased, the speed with which the weight (car) is moved becomes slower. This is true, since you will find it necessary to depress the lever a greater distance as you move farther from the fulcrum.

From a study of this simple lever and fulcrum, it is possible to make these deduction: 1. If the speed of an engine remains constant and its torque is multiplied, the engine will lift more weight but will take longer to do it.

2. If the speed of an engine remains constant and its torque is reduced, it will lift less weight but will lift it faster.

Therefore, as engine torque multiplication increases, the car road speed will decrease and as torque multiplication decreases, the car road speed will increase-(engine rpm remaining constant).

The same principle used in the lever and fulcrum example is used in automotive transmission gears. Consider the fulcrum as the car drive, shaft; the amount of weight to be lifted as the torque required to turn the shaft the engine torque as the man's weight; the body of the gear as the lever. Then it is easy to see how the gear multiplies the torque.

4.2 He also relies' on the following extracts from 'How Things Work' (Vol. 1):___
The internal combustion engines generally installed in motor vehicles develop their power output at high speeds of rotation (approx. 4000-6000 r.p.m.). It is therefore necessary to reduce the speed between the crankshaft and the shaft which drives the wheels.

In addition, the torque (see below) that the engine delivers can be varied only within narrow limits. For this reason it is necessary to be able to alter the transmission ratio, so that the driving forces applied to the wheels of the vehicle can be adapted to the varying road resistance conditions.

5. Shri P.S. Bedi, Ld. Consultant on the other hand relies on the lower Appellate Authority's judgment. He submits that 'gears' and 'shafts' are not integral parts of engines; they effect the power of the engine being outside the engine of a tractor. Engine merely produces power.

Any part which controls the power produced by the engine will naturally be outside the engine and cannot be an integral part of it. He relies on HSN Explanatory Notes and points out that 'gears' and 'shafts' of automobiles are specifically excluded from the scope of 84.83. Relevant extracts from HSN Explanatory Notes in respect of Tariff Heading 84.83 and 87.08 are reproduced below: (i) Certain mechanical parts which are used in the transmission of power from an external power unit to one or more machines.

(ii) Certain internal parts of a machine, used to transmit power to the various parts of the same machine (b) Transmission equipment of the kinds described above (gear boxes, transmission shafts, clutches, differentials, etc.), but which are designed for use solely or principally with vehicles or aircraft (Section XVII): it should, however, be noted that this exclusion does not apply to internal parts of vehicle or aircraft engines-these parts remain classified in this Heading.

Thus a crank shaft or a cam shaft remains in this Heading even if it is specialised for a motor car engine: but motor car transmission (propeller) shafts, gear boxes and differentials fall in Heading 87.08.

It should further be noted that transmission equipment of the type described in this Heading remains classified here even if it is specially designed for ships.

87.08--This Heading covers parts and accessories of the motor vehicles of Heading 87.01 to 87.05, provided the parts and accessories fulfil both the following conditions: (i) They must be identifiable as being suitable for use solely or

principally with the above mentioned vehicles; and (ii) They must not be excluded by the provisions of the Notes to Section XVII (See the corresponding General Explanatory Note).

(D). Gear boxes of all types (mechanical, overdrive, preselector, electro-mechanical, automatic, etc.); torque converters; gear box, castings; shafts (other than internal parts of engines or motors); gear pinions; direct drive dogclutches and; selector rods, etc.

(F). Other transmission parts and components (for example, propeller shafts, half-shafts; gears, gearing; plain shaft bearings; reduction gear assemblies; universal joints). But the Heading excludes internal parts of engines, such as connecting rods, push-rods and valvelifters of Heading 84.09 and crank shafts, cam, shafts and flywheels of Heading 84.83.

6. In his rejoinder Shri B.K. Singh submits that HSN Explanatory Notes are not relevant because Section Note 2(e) of Section XVII of the HSN excludes internal parts of engines from the scope of 84.83 and not integral parts as in CETA 1985. Gears and shafts are not internal parts of engines, that is why 'gears' and 'shafts' have been excluded from 84.83 in the Explanatory Notes.

7. We reproduce below the findings of the Lower Appellate Authority as set out in para 10 of the impugned order: 10. Coming now to the merits of the case, I find that the short point for consideration is whether the gears, gearing shafts and spacing washers are to be classified under Tariff Heading No. 84.83, as contended by the Appellants or under Tariff Heading 87.08 as argued by the Respondents and the consequential demand arising therefrom. There is apparently no dispute about the fact that the goods under dispute are not parts of engines or motors but are tractor parts. The real contest is between Tariff Heading 84.83 and 87.08. As per Section Note I(k) of Section XVI of the Central Excise Tariff, articles of Section XVII are excluded from the purview of Section XVI. Therefore, if it can be established that the goods under dispute fall under Section XVII then it would automatically get excluded from the purview of Section XVI and in that event Note (2) of Section XVI would not have any applicability since it applies specifically to goods of Chapter 84 & 85 only falling under Section XVI.

Therefore, the point to be considered is whether the goods under dispute are covered by Section XVII or not. In this context, the provision of Section Note 2(e) of Section XVII assumes relevance. This runs 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 84.83'. From careful analysis of this provision, I find that both grammatically and otherwise the expression 'provided they constitute integral part of engines or motors' has to be taken as qualifying the expression 'Articles of Heading No. 84.83'. The Appellants' argument that this expression is qualifying the words 'Articles of Heading No. 84.81 or 84.82' is not logically sound. This is because of the use of the conjunction 'And' following the expression 'Articles of Heading No. 84.81 or 84.82' which disjoins the above expression from the fact that the expression 'provided...or motors' would have been placed immediately after the expression 'Articles of Heading No. 84.81 or 84.82' had the intention been to make this expression a qualifying remark for the items falling under Tariff Heading 84.81 or 84.82 and in that event there would have been a semicolon after the word 'Motors'.

Therefore, the most logical and harmonious construction of Section 2(e) in my view, is that the expression 'Parts' & 'Parts & accessories' will not apply to only such articles of Heading No. 84.83 which constitute integral parts of engines or motors. Since the goods in question are undisputedly not integral parts of engines or motors, the net effect is that the expression 'Parts' & 'Parts & accessories' appearing under Section XVII would apply to such articles. I am, therefore, of the view that the goods in question are to be taken as covered by Section XVII of the Central Excise Tariff and being so they are automatically excluded from the purview of Section XVI and hence from the purview of Tariff Heading No. 84.83.

Even by the Rules for the interpretation of the Central Excise Schedule, I find that the classification of the goods under dispute has to be first determined by application of Rule 1 itself according to the terms of the Heading read with relative Section or Chapter Notes. Therefore, when it is possible to determine the

classification by applying Rule 1 itself, there would not be any requirement to go over Interpretative Rule 2(a) as has been sought to be done by the Appellants. As the goods are admittedly tractor parts and not parts of engines or motors, they are, therefore, appropriately classifiable under Tariff S.H. No. 8708.00 as has been correctly held by the Asstt. Collector in this case. Therefore, on merits, the Appellants' case has no force.

7.1. We note from the above findings that the Appellant-Collector is contesting the impugned order purely on the basis of Note 2(a) of Section XVI and Rule 3A of the Interpretative Rules for the Central Excise Tariff Schedule under CETA 1985. There is no controversy whether the 'gears' and 'shafts' in question are integral parts of the engine of the tractor or otherwise. Revenue's entire case in Appeal memo is based on the fact that Tariff-Heading 84.83 covers 'gears' and 'shafts' specifically and therefore, it should be preferred to the Tariff Heading 87.08 which is of a general nature part of tractors. Such an argument advanced by the Appellant-Collector ignores the various Section Notes mentioned above. This cannot be accepted, because the very first Rule of the Interpretative Rules relied upon by the Revenue itself enjoins that classification is to be made according to the terms of the Headings and the relative Section Notes and Chapter Notes.

7.3. Argument now advanced by the Ld. SDR that 'gears' and 'shafts' under consideration are integral parts of the engine, on the basis of the meaning of the word 'integral' is in our view without any evidence.

It appears from the finding of the Ld. Lower Appellant Authority, already set out and emphasised above, that the "goods in question are undisputedly not integral parts of engines or motors". Revenue cannot now take somersault and say that these are integral parts of the engine without disputing this finding in the 'grounds of Appeal' and without bringing on record any evidence to that effect. It is apparent from the extracts of HSN Explanatory Notes set out that certain 'gears' and 'shafts' which are internal parts of the engines would be covered by Tariff Heading 84.83. We do not think it is necessary for us to enter into the controversy and effect of substitution of the word 'internal' occurring in HSN by the word 'integral' in Section Note 2(e) of Section XVII of CETA, 1985 in the absence of any evidence required

to be adduced by the Revenue, and in the absence of any contest to the finding of the Collector (Appeals).

7.4. Question before us is purely of construction of the contending Tariff Headings 84.32 and 87.08 with relative Section Notes and Chapter Notes and Interpretative Rules of the Tariff. On this question, Revenue fails. Impugned order is confirmed. Revenue's Appeal is rejected.

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