

Jaypee Forges Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-21-1995

Reported in : (1996)(83)ELT49TriDel

Appellant : Jaypee Forges

Respondent : Collector of Central Excise

Judgement :

1. M/s. Jaypee Forge have filed this appeal being aggrieved by the Order-in-Appeal passed by the Collector, Central Excise (Appeals). The Collector (Appeals) in his impugned order had held that the classification of the subject goods has been done correctly by the Assistant Collector. The Asstt. Collector in his order had held that "In view of the foregoing discussions, I classify these forgings and forged products as motor-vehicle parts under Chapter sub-heading 8708.00 of the CETA, 1985." 2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of forgings and forged articles and claimed classification of their products under Chapter sub-heading No. 7224.00 in their classification lists w.e.f. 13-5-1988, 1-3-1989 and 20-3-1989.

Later on the appellants claimed classification of these products under Chapter sub-heading 7326.90. However, the department was of the view that these forgings had already attained essential character of finished products as parts of motor vehicles and hence by virtue of Interpretative Rule 2(a) these products though not fully finished were to be classified as if they were finished parts under Chapter sub-heading 8708.00 of CETA, 1985. Accordingly, a show cause notice

was issued to the appellants asking them to explain as to why the goods manufactured by them should not be classified under Chapter Heading 8708.00 of CETA, 1985 and why differential duty should not be demanded from them and why penalty should not be imposed.

3. Shri Gautam B. Doshi, Chartered Accountant alongwith Shri Jitendra Singh, Advocate appearing for the appellants submitted that the appellants are engaged in the manufacture of forgings and forged products; that the admitted position was that the goods were forgings and forgings can be machined to gears, pinions etc.; that the dispute between the department and the appellants is that the appellants claimed that their products were classifiable under Chapter 72 or Chapter 73 of the Central Excise Tariff Act, 1985 whereas the department was of the view that the forgings had acquired the essential character of motor vehicles parts and therefore were classifiable under Central Excise Tariff Chapter Heading 87; that the appellants were supplying forgings and forged products to M/s. Bharat Gears Ltd. and Gajra Gears Ltd.; that the purchase orders of these firms clearly showed that the appellants had supplied un-machined forgings and that the purchasers were paying duty on the finished product after machining and finishing them under Chapter Heading 8708.00 or 8483.00 as the case may be; that the show cause notice also admits that the appellants manufactured forgings and forged articles; that the order-in-original speaks that the appellants manufactured forgings and forged articles of motor vehicle parts; that under Notn. No. 223/88, dated 23-6-1988 as amended, forgings and forged articles of steel (other than stainless steel) falling under any heading or sub-heading of Chapters 72, 73, 84, 85, 86 or 87 were eligible to concessional rate of duty; that the Tribunal in the case of Shivaji Works Ltd. reported in 1994 (69) E.L.T.674 had held that: "Application of Rule 2(a) would lead us to conclude that an incomplete or unfinished part of a machine or motor vehicle may not fall under Chapters 84, 85 or 87 subject to fulfilment of the condition of essential character. Rule 2(a) does not permit us to conclude that when an article squarely falls under a particular tariff heading, it can be made to fall under another heading by invoking concept of essential character. This is against the plain reading of Rule 2(a) but this is precisely what is attempted to be done by the lower authorities in the impugned order." That the Hon'ble Supreme Court in the case of Tata Iron and Steel Company Ltd. (TISCO) reported in 1988

(35) E.L.T. 608 (SC) had held that: "The goods in question namely wheels and axles are supplies to the Railways in rough machined condition under which excess steel or manufacturing defects are removed and these products are subsequently precision-machined by the Railways themselves at their workshop before being put to use. Therefore it was held by the Hon'ble Supreme Court that the duty is payable only at two stages viz., under Item 26AA on the forged products and under Item 68 on the completion of the manufacture of finished goods." The Id. Chartered Accountant therefore submitted that even after the forgings, the forged products had not acquired the essential character of component parts as they needed further to be worked and further working of these forged products was done by the purchasers before they are identifiable as motor vehicle parts and hence the appellants' products were neither motor vehicle parts nor the forgings can be said to be motor vehicle parts.

4. It was argued by the Id. Chartered Accountant that the product of the appellants was roughly shaped forgings; that forging is the primary product; that alloy steel is used in these forgings; that the goods are un-machined forgings; that in para 9.4 of their order, this Tribunal had interpreted Rule 2(a); that according to this interpretation of Rule 2(a), the appellant's goods had not acquired the character so as to be classified under Central Excise Tariff Sub-Heading 8708.00. In support of his contention, the Id. CA cited and relied upon the decision of the Tribunal in the case of TELCO v. Collector reported in 1990 (50) E.L.T. 571. Further, the decision of the Delhi High Court in the case of: Metal Forgings Put. Ltd. reported in 1985 (20) E.L.T. 280, and the decision of the Tribunal in the case of Aravali Forgings Ltd. reported in 1994 (70) E.L.T. 693 and again another decision of the Tribunal in the case of Echjay Industries Ltd. reported in 1994 (72) E.L.T. 98 were also cited and relied upon by the Id. Chartered Accountant in support of his contention; that in the case of TELCO, the Tribunal had held that under general principles for determining the essential character for the purpose of Rule 2(a) can be laid down and facts and circumstances of each article had to be looked into to grasp the essential character of that article; that in para 9.2 of this judgment of TELCO, the Tribunal had held that "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 an automobile part synchro ultimately

manufactured by the appellants at their works in India as explained by TELCO in their appeal"; that in para 10 of this order, it was held by the Tribunal that in view of the function of the product synchro, it cannot be said that the product as imported had acquired the essential character of a finished product. Summing up, the Id. Chartered Accountant submitted that the admitted position was that the product was forgings or forged parts and since the product had not acquired the essential character of a motor vehicle part inasmuch as it needed machining and finishing which was done by the purchaser. Therefore, it could not be classified as a motor vehicle part falling under Central Excise Tariff sub-heading 8708.00. The Id. Chartered Accountant therefore prayed that in view of the case law cited and relied upon and the submissions made by him, the appeal may be allowed.

5. Shri R.K. Kapoor the Id. SDR appearing for the respondents submitted that forged products in the instant case had attained shape and character of motor vehicle parts and therefore were classifiable under Central Excise Tariff Heading 8708.00; that the products were gears, pinions, crown, shaft housing, conforming to specifications and the drawings and were not roughly shaped; that the letter dated 10-11-1990, from Jaypee Forges clearly states that the appellants have indicated the use of the forged products as for motor vehicle parts; that in that letter the appellants have nowhere shown that they were rough forgings; that the invoices clearly show part number and not the drawing number; that the part numbers are indicated only in finished parts; that the photographs do not show rough forgings; that Central Excise Tariff Heading 7224 reads "Other alloy steels in ingots or other primary forms; semi-finished products of other alloy steel"; that Chapter note (ij) excludes classification of the product of the appellants under CE Tariff Chapter Heading 7224; that classification under 7326.90 is ruled out in view of explanatory notes on page 1038 wherein it has been provided that "This heading does not cover forgings which are products falling in other headings of the Nomenclature (e.g. Recognisable parts of machinery or mechanical appliances) or unfinished forgings which require further working but have the essential character of such finished products." that HSN Explanatory notes at page 1433 provided that forged products are not excluded from the purview of Tariff Heading 8708.00 as motor vehicle parts; that the product manufactured by the appellants was not rough forgings but recognisable parts of motor vehicles and hence were not

eligible for classification under Chapter 72 or 73 of the CETA, 1985. In support of this contention, the Id. SDR cited and relied upon the judgment of the Tribunal in the case of Bajaj Auto reported in 1988 (33) E.L.T. 367 wherein the Tribunal had held that semi-finished components having been processed, shaped and forged to specific dimensions having attained approximate shape and outline of finished circle - Interpretative Rule 2(a) of Customs Tariff Act, 1975 to apply and that the goods were classifiable under Heading 84.06 and 87.09/12(1).

6. On the question of interpretation of Rule 2(a) in the case of TELCO, the Id. SDR submitted that the interpretation was given in respect of castings and not forgings and therefore the same was not applicable to the facts of the present case. In support of his contention, the Id.

SDR submitted that the factors relevant for the application of Interpretative Rule 2(a) of Schedule I to CTA, 1975 have been enumerated in the case of BHEL Ltd. reported in 1987 (28) E.L.T. 545; that in the light of these factors, the products manufactured by the appellants squarely qualified for classification under Central Excise Tariff Heading 8708.00. In view of the above submissions, the Id. SDR submitted that the appeal may be rejected.

7. In his rejoinder, the Id. Chartered Accountant submitted that the forgings manufactured by the appellants were roughly shaped and not roughly forged. Analysing the relevant entries in CET before its restructuring in 1988 and after its restructuring, the Id. Chartered Accountant submitted that the product manufactured by them was a forging eligible for the benefit under Notification No. 223/88; that their case was fully covered by the decisions in the case of Shivaji and TELCO that the case of Bajaj Auto relied upon by the Id.SDR was discussed while arriving at the decision in the case of TELCO therefore the forgings manufactured by them were not motor vehicle parts.

8. Heard the submissions of both sides and considered them. We observe that the appellants claimed classification of the product under GET sub-heading No. 7224.00 and subsequently under GET heading No. 7326.90.

On the other hand, the department was of the view that taking into consideration, the provision of Interpretative Rule 2(a), the product manufactured by the appellants was classifiable under GET sub-heading 8708.00. For proper appreciation of these contentions, Tariff description and the provision of Rule 2(a) is reproduced below : -7224.00 Other alloy steel in ingots or other primary forms; semi-finished products of other alloy steel.8708.0 Parts and accessories of the motor vehicles of Heading Nos. 87.01 to 87.05.

RULE 2(a): Any reference in a heading to goods shall be taken to include a reference to those goods incomplete or unfinished, provided that, the incomplete or unfinished goods have the essential character of the complete or finished goods. It shall also be taken to include a reference to those goods complete or finished (or falling to be classified as complete or finished by virtue of this rule), removed unassembled or disassembled." 9. The admitted position is that the goods are forged products. The only dispute is whether they had acquired the essential character of complete or finished goods or not. All the other disputes are peripheral and minor.

10. In the case of BHEL reported in 1987 (28) E.L.T. 545, the Larger Bench of this Tribunal had examined the factors relevant for the application of Interpretative Rule 2(a) and had held as under :- "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." 11. The Tribunal had examined the implications of Interpretative Rule 2(a) in the case of Shivaji Works Ltd. v. Collector, Aurangabad. The relevant para of the report is

para 9.4 which is reproduced below :- "9.4 Lower authorities have relied on Rule 2(a) of Interpretative Rules to arrive at the finding that the 'castings' in question are parts of machine or parts of motor vehicle. We shall now examine and analyse the wording of Rule 2(a) whether such a result is possible.

Rule 2(a) has already been extracted in para 5 above. It states that any reference in a heading to goods shall be taken to include a reference to those goods incomplete or unfinished, provided that the incomplete or unfinished goods have the essential character of the complete or finished goods. In other words, taking the example of the concerned Heading 73.25, reference to "other cast articles of iron or steel" would include reference to incomplete or unfinished other cast articles of iron and steel. We have already observed that a cast article is complete when it has been proof-machined and surface defects have been removed. Earliest form of 'cast article' is when it comes out of the casting mould. The Heading 73.25 would, therefore, include all "castings" from the stage of their emergence from the casting mould to the stage of being proof-machined.

Similarly, an incomplete/unfinished part of machine or motor vehicle would also be covered under Chapters 84, 85 or 87 as the case may be. A machine part or motor vehicle part, subject to any section or Chapter note, would normally be one which is ready for use in a particular machine or motor vehicle. Application of Rule 2(a) would lead us to conclude that an incomplete or unfinished part of a machine or motor vehicle would fall under Chapters 84, 85 or 87, subject to fulfilment of the condition of "essential character".

Rule 2(a) does not permit us to conclude that when an article squarely falls under a particular tariff heading, it can be made to fall under another heading by invoking the concept of essential character. This is against the plain reading of Rule 2(a). But this is precisely what is attempted to be done by the lower authorities in the impugned orders. It is not denied that 'castings' of iron and steel do fall under Heading 73.25, but because the castings have the 'essential character' of products under Chapters 84, 85 or 87, such 'castings' should be deprived of their most appropriate and only classification. Such an interpretation of Rule 2(a) is untenable. It will create clashes within different headings and disturb their

harmony." 12. The Tribunal in the case of TELCO reported in 1990 (50) E.L.T. 571 again went into the implications of Interpretative Rule 2(a). Relevant paragraphs are para 12.1,12.2 and 12.3 which are reproduced below :- * * * * * 13. The Tribunal again examined the implications of Interpretative Rule 2(a) in the case of Echjay Industries Ltd. The relevant para is para 12 which is reproduced below : - 14. As against this, the Id. SDR cited and relied upon the decision of the Tribunal in the case of Bajaj Auto Ltd. wherein the Tribunal again interpreted the implications of Interpretative Rule 2(a). The relevant para of this order para 5 which is reproduced below :- * * * * * 15. On careful consideration of the above decisions, we find that the general principle evolved is that in each case all the factors would have to be taken into consideration individually and then collectively to determine whether the article had attained the approximate shape or outline of the finished product and can be used only for completion into the finished article. We also observe that in the case of TELCO, Echjay and Shivaji, the Tribunal had held that the forged products/forgings had not acquired the essential character of the finished product and therefore they were classifiable as forgings or semi-finished products. These decisions of the Tribunal pertained to the disputes of classification of the goods prior to restructuring of the Central Excise Tariff in respect of Chapters 72-73 before 1-3-1988.

However, the fact remains that the ratio of the decisions shall still have persuasive value. Now examining the facts of the present case with reference to the material available on record, we find that in the classification list No. 67/88, the goods have been described as (i) semi-finished products of iron or steel - forgings and forged products of steel. This classification list has been approved by the Asstt.

Collector on 24-10-1988. Similarly in other classification list also for the subsequent period, the goods have been described as forgings and forged articles of steel. In the purchase orders placed by M/s.

Gajra Gears and Bharat Gears, the goods have been described as forgings for different parts of motor vehicles. M/s. Bharat Gears in their letter dated 3-8-1992 have certified that "un-machined forgings supplied to us as forged condition by you undergo normalising, shot blasting, plank turning, gear cutting and further

operations as required before the end use." M/s. Gajra Gears in their letter dated 22-8-1992 have certified that "We are availing modvat credit on forgings received from M/s. Jaypee Forge". However, in the purchase order of M/s. Gajra Gears, it is clearly indicated as : Note : 1. The material used for forgings should be from HUSCO, ASP-KALYANI, Oswal Steel (Forged Circuit) and Test Certificate as per Form already with you should be sent alongwith each batch of forging despatched.

3. Excise Duty : 10% of the value plus special duty of 15% on basic excise duty as applicable.

5. Forgings are to be despatched by Road Transport on (Freight to pay) on door delivery basis to the destination indicated by us." From the above, it is clear that the forgings supplied by the appellants undergo a number of operations before they become parts of motor vehicles. A lot of reliance was placed by the respondents on the ratio of the decision of the Tribunal in the case of Bajaj Auto. In the case of Bajaj Auto, the Tribunal had found that the goods were described as forgings for shaft and samples were produced before the Tribunal. On the basis of the inspection of the samples and the description given in the Bill of Entry, the Tribunal had held that the forgings imported by M/s. Bajaj Auto were classifiable under Chapter Heading 8707.00 of the Central Excise Tariff Act, 1985. In the instant case, we find that forgings had to go a number of processes before they acquired the essential characteristic of the motor vehicle part. We also observe that on purchase of these forgings, the buyers were further processing these goods to become motor vehicle parts and were paying duty under Chapter Heading 8707.00 after undertaking the processes of these forgings. Moreover no forgings were produced before us for inspection to see whether they had acquired the essential character of motor vehicle parts. Thus, the case of Bajaj Auto is clearly distinguishable. Moreover, the Hon'ble Supreme Court in the case of T7SCO had held that there would be two stages of levy of duty, one was the forgings stage and the second was on the finished stage as motor vehicle or machine parts. Forgings which have been subject to processes upto and including the stage of machining whereby they were only smoothed and made ready for final machining to shape them into machine parts were to be recorded as pieces - roughly shaped.

16. Forgings are articles recognised as separate articles in the trade as also in the First Schedule to Central Excise Tariff Act, 1985.

Therefore forgings of parts by themselves cannot be treated as having the essential character of parts so as to qualify for classification as parts. Heading 73.25 would therefore include all the forgings from the stage before emergence to the stage of machining. A machine part or a motor vehicle part subject to any Section or Chapter note would normally be one which is ready for use in a particular machine or motor vehicle. Application of Rule 2(a) would lead us to conclude that an incomplete or unfinished part of a machine or motor vehicle would fall under Chapters 84, 85 or 87 subject to fulfilment of the condition of essential character and that Rule 2(a) does not promise us to conclude that when an article squarely falls under particular Tariff heading, it cannot be made to fall under another Tariff heading by invoking the concept of any essential character. It is not denied that forgings of steel do fall under Heading 73.25 not because the forgings had acquired the essential character of products under Chapters 84,85 or 87, such forgings should be deprived of their most appropriate and only classification under Chapter Heading 73.25. Such an interpretation of Rule 2(a) is untenable.

17. We also note that forged products which are machined polished, etc.

and made fit for being used as machine parts, assume altogether different character from what it was when forged so as to make them identifiable or usable as machine parts.

18. In the instant case, admittedly, the items were declared as forged products/forgings as also from the letters submitted by the appellants from their buyer, these forged products underwent a number of processes before they took the shape of parts of motor vehicles.

19. It is a fact that with effect from 1-3-1988, Chapters 72 and 73 of the Central Excise Tariff Act, 1985 were aligned to HSN. The item 72.07 reads as : 72.07 : Blooms, billets, slabs and sheet bars (including tin plate bars) and hoe bars Forged products/forgings not covered under Heading 72.07 would be classifiable

under Chapter 73, 84, 85, 86, 87 etc. as blanks or semi-finished articles having essential character of machinery parts.

The essential condition therefore was whether the product manufactured by the appellants fell under Heading 72.07 or not. In the Explanatory notes on page 991 of the HSN, it has been provided that "The Heading covers blooms, billets, slabs, sheet bars, pieces roughly shaped by forging, blank for angles shapes or sections and all products obtained by continuous casting". Thus, we find that Item 72.07 covers pieces roughly shaped by forging. What do the words 'pieces roughly shaped' mean? The Board had clarified that in view of the order of the Hon'ble Supreme Court in the case of TISCO v. UOI reported in 1988 (35) E.L.T.605 on two-stage levy for castings and forgings under erstwhile Central Excise Tariff and of the High Court of Gujarat (Ahmedabad)'s order dated 5-2-1988 in the case of Echjay Industries v. UOI which is against the recourse to Explanatory notes so long as the entries were not aligned with HSN, the ratio of Board's decision should be applicable mutatis mutandis to the classification of forgings as well. The Board noted that Chapters 72 and 73 of the Central Excise Tariff Act, 1985 prior to 1-3-1988 were not fully aligned with HSN. The entries in the Chapter 72 and 73 of the CETA, 1985 prior to 1-3-1988 to be interpreted in accordance with the established practice and trade understanding.

Accordingly, forgings which had been subjected to processes upto and including the stage of proof machining whereby they were only smoothed and made ready for final machining to shape them into machine parts were to be recorded as pieces roughly shaped under the old tariff item 25 prior to 28-2-1986 and also under Heading 72.08 with effect from 28-2-1986.

20. With effect from 1-3-1988, Chapters 72 and 73 of CETA, 1985 were fully aligned to HSN and accordingly from 1-3-1988 onwards, the classification should have been determined in the light of HSN Explanatory Notes on the basis of narrow restricted and specialised scope of Heading 72.07 and by application of the concept of blanks and semi-finished article under Rule 2(a) of the Rules of Interpretation.

Forgings and forged products not covered under Heading 72.07 would be classifiable under Chapters 73, 84, 85, 86 etc. as blanks or semi-finished articles having essential character of machinery parts etc.

21. On careful consideration of the material placed before us, we find that in classification list No. 67/88, dated 14-10-1988, the assessee has claimed classification of their product under Chapter sub-heading 7207.90 in classification list dated 1-3-1989 classification of the product has been claimed by the assessee under Chapter sub-heading 7224.00 in the classification list dated 8-4-1991, the assessee has claimed classification of their product under Chapter sub-heading 7326.90 and in classification list dated 1-3-1992, the assessee has claimed classification of their product under Chapter, sub-heading 7326.90. In the classification list, the goods have been described as forgings and forged articles of steels, the purchase orders received from customer, the goods have been described as pinion forging, crown forging, speed gear forging etc. whereas the description given in Bill No. JP 76399/92-93, dated 13-7-1992, the product has been described as unmachined forgings to part No. 066, in Bill No. JP/6400/92-93, dated 13-7-1992, the product has been described as unmachined forgings to part No. 044, again in Bill No. JP/6493/92-93, dated 3-8-1992, the product has been described as unmachined forgings to part No. 030. On analysis of the above documents, the admitted position is that the classification of the goods admittedly pertains to the period after 1-3-1988 when the Chapters 72 and 73 of the Central Excise Tariff were fully aligned with HSN. The Hon. Supreme Court in the case of Fenner (India) Ltd., had ruled that for legal purposes classification shall be determined according to the terms of the headings and any relative heading or chapter notes. In this view of the matter also decisions on the issue of various counts shall have to be examined in the light of the explanatory notes of HSN as the Tariff Pleading was fully aligned to HSN.22. The second point that clearly emerges is that the goods were being manufactured according to the part No. and drawings provided by the customers. The third thing according to the description given in the bills that becomes explicit is that the forgings were unmachined and only the machining was to be done on the forgings/forged products.

23. Now examining the descriptions given in the classification lists and the bills vis-a-vis Note (ij), the note becomes important; Note (ij) of the Central Excise Tariff Act, 1985 provides that the Heading 72.07 covers blooms, billets, slabs, sheet bars, pieces roughly shaped by forging, blanks for angle shapes or sections and all products obtained by continuous casting. In the HSN Notes the terms 'pieces roughly shaped by forging' have been defined as "these are semi-finished product of rough appearance and large dimensional tolerances produced from blocks or ingots by the action of power hammers or forging presses. They may take the form of crude recognisable shape in order that the final article can be fabricated without excessive waste, but the heading covers those pieces which require considerable further shaping in the forge, press, lathe, etc.

The heading would, for example, cover an ingot roughly hammered into the shape of a flatted zig-zag and requiring further shaping to produce a marine crankshaft, but it would not cover a crankshaft forging ready for final machining. The heading similarly excludes drop forgings and pressings produced by forging between matrices since the articles produced by the operations are ready for final machining".

24. Examining this definition given in the HSN notes which were fully aligned with the Central Excise Tariff from 1-3-1988, we observe that forgings were not machined and the only operation that was required to be done with the forgings, was machining. In the HSN Notes it has been very clearly provided that Heading 72.07 will not cover a product which is ready [for] final machining. The products manufactured by the appellant were ready for final machining as is evident from the bills issued by the appellants to their customers and a few of them have been cited (supra). In this view of the matter, we hold that the forgings and forged products manufactured by the appellants were correctly classified under sub-heading 8708.00 of the Central Excise Tariff Act, 1985. This finding is fully supported by the rulings of the Hon.

Supreme Court in the case of Fenner (India) Ltd. v. Collector of Central Excise, Madurai reported in 1995 (77) E.L.T. 8. In this case, the Hon. Supreme Court had held as under :- "14. The Tribunal's reliance upon the judgment of this Court in the

case of Geep Flashlight Industries Ltd. was, in our opinion, misplaced. The court was there concerned with the interpretation of a tariff item read by itself. It had not to be read in the light of terms of headings or relative Section or Chapter Notes. This Court held that plastic torches were not articles made of plastic.

Articles made of plastic meant articles made wholly of the commodity commercially known as plastic and not articles made from plastic and other materials. In the instant case the Tariff Schedule contains rules for its interpretation which require that "for legal purposes classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes". The Notes relative to Chapter 39 state that Heading 39.22 for the earlier period applies to conveyor belts. For the earlier period Tariff Heading 39.26 must, therefore, be read as applicable to the appellants' conveyor belts. For the latter period, the Explanatory Note to Tariff Heading 39.26 in the Harmonised Coding System, which is identical to Tariff Heading 39.26 of the Tariff Schedule, must be taken to be a guide, for the Tariff Schedule is based upon the Harmonised Coding System. That apart, we are unable to uphold the Tribunal's finding that the belting made by the appellants is a "strip". An article which is over 100 metres but only upto 1200 millimetres in width cannot be described as a "strip". Tariff Entries 3920.11 and 3920.12 cannot, therefore, be made applicable to the belting made by the appellants. For the later period, Tariff Heading 39.26 must be read as applicable to it." 25. Having regard to the above findings, the impugned order is upheld and the appeal is rejected.

With all due respect to my Id. brother, my findings in this matter are as follows : 26. The question before us is as to whether these "Forgings & Forged products of Steel" merit classification under Chapter Heading 8708.00 of GET, 1985 by application of the Rule 2(a) of the Rules of Interpretation of the Excise Tariff Act.

27. The appellants had contended before the lower authority that the gears and pinions for which they were manufacturing forgings are not for engine application. The process of manufacture noted by Id. Asstt.

Collector is that "The process of manufacture involves cutting of iron bars, billets into requisite quantity in accordance with the specifications, heating of cut pieces

to the required temperature and getting forged in the die forge hammer in the hot stage. Such hot forgings are taken out of the die hammer, will have excess material projecting on the sides. These forgings are then subjected to air cooling and thereafter the excess material is removed by grinding without causing any change in the form of the product. It is seen that no other process is carried out by them in their factory, other than this and therefore, the forgings & forged products of steel manufactured by them are not subjected to any machining or treatment other than what is provided in the Notification No. 223/88 28. The Id. Asstt. Collector has not considered these items as 'Forgings & Forged Products' for classification under Chapter sub-heading 7326.90 which has already extracted in Id. Member (T)'s order. He has held that the items are having the shape and essential characteristics of 'gears and pinions' and these forgings can be converted only to such gears and pinions, as they are not for engine application and by applying Rule 2(a), they are required to be classified under Chapter Heading 8708.00, as they have the essential character of such finished products and hence are excluded from Heading 73.26 in the HSN Explanatory Notes (Vol. 3 page 1038). The Ld. Member (T) has also noted that no forgings were produced before us for inspection to see whether they had acquired the essential character of motor vehicle parts.

29. I am of the view that these goods have not attained the stage of essential characteristics of 'gears and pinions' and that they are still in the "Forged stage" without further worked, without having undergone any of the processes prior to the stage of machining to attract Rule 2(a) of the interpretative Rules. Before, we resort to Interpretative Rules 2(a), the Rule (1) has to be exhausted. Rule 1 reads : "1. The titles of Sections and Chapters are provided for case of reference only, for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require,, according to the provisions, hereinafter contained" Therefore, when an item falls clearly under any Section and Chapter heading, then the same has to be resorted to without reference being taken to Rule 2(a), which reads as follows : "2(a) Any reference in a heading to goods shall be taken to include a reference to those goods incomplete or unfinished, provided that, the incomplete or unfinished goods have the essential character of the

complete or finished goods. It shall also be taken to include a reference to those goods complete or finished (or falling to be classified as complete or finished by virtue of this rule), removed unassembled or disassembled".

In this case there is Chapter 73 which deals about "Articles of Iron or Steel".

This Chapter 73 falls under Section XV, which refers to 'Base Metals and Articles of Base Metal'. Note 2 of Section XV inter alia states that "In Chapters 73 or 76 and 78 to 82 (but not in Heading No. 73.15) references to parts of goods do not include references to parts of general use as defined above" "Subject to the preceding, paragraph and Note 1 to Chapter 83, the Articles of Chapter 82 (but not in Heading No. 73.15) references to parts of goods do not include reference to parts of general use as defined above".

"The expression 'Parts' and 'accessories' do not apply to the following articles, whether or not they are identifiable as per the goods of this Section :- (a) Parts of general use, as defined in Note 2 of Section 2 of Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39), (e) Machines and apparatus of Heading Nos. 84.01 to 8479, 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. 8483.

Reference in Chapter 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.

Therefore, it follows that Section XV does not exclude parts from its ambit. Hence Rule 1 of the interpretative Rule continues to apply and Rule 2(a) cannot be resorted to.

There is a specific chapter heading for 'Forged or stamped, but not further worked' and for such articles under Chapter Heading 73.26 and when such be the case, Rule 1 of the Interpretative Rules applies and classification of goods has to be

done as to be determined according to the terms of the headings and any relative Section or Chapter Notes.

30. On the basis of these understanding, the Tribunal decided in several judgments as in the case of Shivaji Works Ltd. (Supra), Aravali Forgings (Supra), Echjay Forgings (Supra) that the Rule 2(a) cannot be brought into play and thus castings of machine parts or Forgings of Steel upto stage of Proof machining would not fall under Chapter 84 to 87 of CET, 1985. The argument now placed is that these judgments were prior to aligning of HSN Explanatory Notes and now after the tariff having been aligned to HSN Explanatory Notes, the Rule 2(a) would apply. This argument is also not sustainable for the following reasons : (a) The goods are in 'unmachine forgings' stage and they are required to undergo several process of normalising, Shot blasting, plank turning, gear cutting and further operations of turning, grinding, machining, polishing to bring the article to accurate specification and dimensions. In the present stage, they have just emerged from forging, without acquiring any essential characteristic of a part of a motor vehicle. The revenue has not placed any evidence that the article has acquired such a shape and there has been further working of such a nature, and thus is no longer an "article of forging". The photographs of the product have been shown to us and the same is in the file. The impugned goods are straight from forging without any processes undertaken on it except the chipping of excess material around it.

(b) The explanatory Notes to Chapter 73.26 at pages 1037 & 1038 are extracted hereinbelow: "This heading covers all iron or steel articles obtained by forging or punching, by cutting or stamping or by other processes such as folding, assembling, welding, turning, miling or perforating other than articles included in the preceding headings of this chapter or covered by Note 1 to Section XV or included in Chapter 82 or 83 or more specifically covered elsewhere in the Nomenclature.

(1) Horseshoes : boot or shoe protectors whether or not incorporating affixing points; tree climbing irons; non-mechanical ventilators; Venetian blinds; binding hoops for casks; iron or steel fittings for electric wiring (e.g. stays, clips, brackets); suspension or connecting devices for insulator chains (suspension rods, shackles,

extensions, eyes or rings with stud connections, ball sockets, suspension clamps, dead-end clamps etc.), non-calibrated steel balls (see Note 6 to Chapter 84); fencing posts, tent pegs, stakes for tethering livestock, etc. hoops for garden borders, trainers for trees, sweet peas, etc. turhbuckles for bracing fencing wires; tile: and gutters; clamping or tightening bands or collars (hose, used for clamping flexible tubing or hose to rigid piping, taps etc. hangers, stays and similar supports for fixing piping and tubing (except clamps and other devices specially designed for assembling tubular elements for metal structures, which fall in Heading 73.08), capacity measures (other than domestic types Heading 73.23); thimbles; road studs; forged hooks, e.g. for cranes, snap hooks for all purposes; ladders and steps; trestles; supports or chaplets (other than moulders' nails, see Heading 73.17) for foundry moulding cores; limitation flowers or foliage of wrought iron or steel (but not including articles of heading 83.06 and imitation jewellery of Heading 71.17).

(2) Articles of wires, such as snares, traps mouse-traps, steelpots and the like; wire ties for fodder etc. tyre tringles; duplex or twin wire for making textile loom healds and formed by soldering together two single wires; nose-rings for animals; mattress hooks, butchers' hooks, the hangers, etc; waste paper baskets.

(3) Certain boxes and cases, e.g. tool boxes; botanists' etc., collection or specimen cases, trinker butchers' including containers of Heading 73.10, household containers (Heading 73.23), nor ornaments (Heading 83.06).

The heading also covers vacuum cup holders (suction grips) consisting of a base, a handle and a vacuum lever, and rubber discs, intended to be attached temporarily to an object (glass in particular) with a view to enabling the object to be moved.

The heading does not cover forgings which are products falling in other headings of the Nomenclature, (e.g. recognisable parts of machinery or mechanical appliances) or unfinished forgings which require further working but have the essential character of such finished product (b) Reservoirs, tanks, vats and similar containers, of Heading 73.09 or 73.10.

(d) Office desk equipment, such as book ends, ink stands, pen trays, blotters, paperweights and office-stamp stands (Heading 83.04).

(e) Statues, vases, urns and crosses of the type used for decoration (Heading 83.06).

(f) Large scale shelving for permanent installation [in] shops, workshops, storehouses, etc. (Heading 73.06) and shelved furniture of Heading 94.03.

(g) Skeleton wire frames for making textile or paper lampshades (Heading 94.05)".

As can be seen from the above reading, only those "forgings which are products falling in other headings of the Nomenclature (e.g.

recognisable part of machinery or mechanical appliances) or unfinished forging which require further 'working but have the essential character of such finished products" not covered in the heading.

In this case admittedly, the goods are just in forged stage without undergoing any process or processes to acquire essential character. The term "Essential character" has not been defined anywhere, but the understanding arrived in several judgments referred to before us, is that the product should have crossed the stages of processes delineated in the Notification No. 223/88.

Further, the above HSN Explanatory Notes states that the heading covers all iron or steel articles obtained by Forging or Punching by cutting or stamping or by other processes such as folding, assembling, welding, turning, milling or perforating, but excludes other than articles included in the preceding headings of this Chapter or covered by Note 1 to Section XV or included in Chapter 82 or 83 or more specifically covered elsewhere in the Nomenclature. As the HSN Explanatory Notes itself points out that an article would go out of Heading 73.26 only if it is included in the preceding heading of this chapter or covered by Note 1 to Section XV or included in Chapter 82 or 83 or more specifically covered elsewhere in the Nomenclature. As I have examined it is seen that the impugned item is not covered by Note 1 to Section XV or included in Chapter 82 or 83 or more specifically covered elsewhere and hence Chapter 73 cannot be ruled out at all. In

BHEL v. Collector 1989 (39) E.L.T. 569, the department had classified the goods as machine parts. The Tribunal overruled the said view and held that the goods had still the characteristic of forgings, even though rough machined and hence are more appropriately classifiable as forgings than as goods not elsewhere specified i.e.

under Tariff Item 68 and classification claimed under Tariff Heading 26AA was upheld. This ruling still applies to the facts of the case and it is not the case of the revenue that the goods has lost all the characteristic of forging. In the case of Metal Forgings (P) Ltd. 1985 (20) E.L.T. 280 the Delhi High Court, noted several process of cutting of steel, pre-heating, and removal of unwanted material by trimming or by gas cutting or by skin cutting, yet it held that these processes were of forged product itself and not to give any shape or essential characteristic. This view was approved by the Division Bench of Delhi High Court as reported in 1987 (32) E.L.T. [15] and the observation in para 17 at page 23 is vital and they are noted herein below : "17. Whether transformation has taken place or not and whether a new and different article, having distinct name, character or use, has emerged or not is essentially a question of fact depending upon the facts and circumstances of each case. Whether execution of a particular kind of work, results in manufacture of a new and distinct article would also depend upon a number of tests, some of them being, (i) the nature of work carried out, (ii) whether the material undergoes alteration or change in its essential nature and character; (iii) whether anything more is required to be done to said article or the same is marketable without any further process.

It will differ from product to product. There can be no hard and fast rules. The nature and extent of processing may vary from one case to another. In a given case, even a small change may lead to a new article having distinct name, character and use being made. In yet another case it may not be so. To become a new commercial article, the product must cease to be the goods of the taxable description and become that of a different taxable description".

This ruling was approved by Hon'ble Supreme Court as in the case of Tata Iron & Steel Co. Ltd. v. Union of India 1988 (35) E.L.T. 605 at para 4 at pages 608/609.

The same is extracted herein below :- * * * * * 32. The Collectorate and CBE & C had been issuing circulars to express their understanding when a product would acquire essential character.

Trade Notice No. 31/87 dated 4-3-1987 issued by Vadodara Collectorate, has clarified that merely because the following operations (as noted below) are carried on, the goods would not acquire essential character of the castings and would not be enough to merit classification of such castings as machinery parts under Chapter 84 or 85 as the case may be : This view was reiterated by Central Board of Excise & Customs by F. No.139/2/81, dated 10-11-1981. Therefore, the understanding of "essential characteristics" has been well stated by the Trade Notices and by Board circulars. These understandings have not changed and the impugned goods has not acquired any of the "essential characteristics" of the semi-finished or finished part of motor vehicle to merit classification under Chapter 87.

In Aravali Forgings and in Echjay Industries, it has been clearly held that forged goods manufactured as per drawings by itself would not make them finished goods nor a few permissible processings being done on it would make them so. Therefore applying these ratios, also, it has to be held that the item has not acquired essential character of the complete or finished goods to invoke Rule 2(a) nor the goods are excluded from Chapter Heading 73.26 as per HSN Explanatory Notes.

34. I have carefully gone through the orders proposed by the learned Member (T) and the learned Member (J).

(1) In the classification list the goods were described as forgings and forged product/articles of steel (other than stainless steel).

(2) The process of manufacture involved cutting of iron bars, billets into requisite quantity in accordance with the specifications, heating of cut pieces to the required temperature and getting forged in the die forge hammer in the hot stage. Such hot forgings are taken out of the die hammer and at that stage they will have excess material projecting on the sides. These forgings are then subjected to air cooling

and thereafter the excess material is removed by grinding without causing any change in the form of the product.

(3) In the hands of their customers, who are engaged in the manufacture of machinery parts, the goods supplied by the appellant are subjected to the processes of normalising, shot blasting, blank turning, gear cutting, etc.

(4) During the course of audit in September, 1989, it was mentioned by the Department that the goods were classifiable as other products of iron and steel forged, and were not semi-finished product of iron and steel (refer letter No. CERA/Jaypee/Tal-1/89, dated 13-10-1989 from the Superintendent of Central Excise, Indal, Range-Taloja-1, Panvel Division).

36. Heading No. 73.26 of the Schedule to the Central Excise Tariff Act, 1985 (the Tariff) covers other articles of iron or steel. Various products covered by the different sub-headings under Heading No. 73.26 have been described as under:- Under Heading No. 87.08 parts and accessories of the motor vehicles such as tractors, public transport type passenger motor vehicles, motor cars, motor vehicles for the transport of goods and other special purpose motor vehicles, etc., are covered. Various sub-headings under this Heading No. 87.08 cover such items as gear boxes, axles, shock absorbers, clutches, steering boxes, etc. From the reading of these various items, it is seen that they are all fully finished ready for use parts.

37. In the show cause notice, the main ground for classification under Heading No. 87.08 is that the forgings of motor vehicle parts in question had attained the essential character of the finished parts of motor vehicles. Motor vehicle parts call for strict specifications and precision. Safety of the passengers and the safety of the road users depend upon the quality of the motor vehicle parts. The facts of the case do not establish that the goods cleared by the appellant had the essential character of a motor vehicle part, the character as required for a particular and specific motor vehicle part. The factors, which determine the essential character will vary as between different kinds of goods and may be determined not only by the nature of the material used but as well by the use to which the goods are intended. For precision and sophisticated engineering goods, the criteria may be

different than for primary products. The Tribunal in the case of Bharat Heavy Electricals Ltd. v. Collector of Customs, Madras -1987 (28) E.L.T. 545 (Tribunal) had observed in para 7 of their order as under :- "We find that the words "essential character" have been used in Rule 2(a). These words are again to be found in Rule 3(b) also. In Vol. I of the CCCN Explanatory Notes in dealing with this Rule 3(b) of the CCCN (which is the same as our Rule 3(b) it has been observed that the factor which determines essential character will vary as between different kinds of goods and may be determined by the nature of the material or component, its bulk, quantity, weight or value or by the role of a constituent material in relation to the use of the goods.

No doubt Rule 3(b) dealt with mixture and composite goods and it was in that context that the words "essential character" had been construed in the manner mentioned above. But we feel that the test of essential character as mentioned in the CCCN under Rule 3(b) would also be very relevant in construing the said words in Rule 2(a) also." 38. Forging is a process in which metal is shaped by being heated and then hammered or pressed. Forging machines produce metal parts. For producing motor vehicle parts out of the metal parts a number of processes, which amount to the process of manufacture, are required. In the case of Metal Forgings Pvt. Ltd. v. Union of India -1985 (20) E.L.T. 280 (Delhi), the Delhi High Court had observed in para 15 of their judgment that forged products, which are machined, polished, holed, etc. and made fit for being used as machine parts assume a different name, character and usage. Such forged products as are machined/drilled/polished assume an altogether different character from what it was when forged and so as to make them identifiable or usable as machine parts. In the Letters Patent Appeal, the Delhi High Court in this case in para 26 of their judgment reported at 1987 (32) E.L.T. 15 (Delhi) observed that the goods which emerged after machining, polishing and drilling holes assume new and distinctive forms.

39. Under the test of marketability and commercial parlance, the people in trade would not think of the goods in the form cleared as motor vehicle parts. No dealer in motor vehicle parts will sell them as motor vehicle parts.

40. Taking all the relevant considerations into account, I agree with the learned Member 0) that the impugned order is liable to be set aside and the appeal merits acceptance. I order accordingly.

41. In view of the majority judgment, the impugned order is set aside and the appeal is allowed.

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