
(2011) 12 CHH CK 0032
In the Chhattisgarh High Court
Case No : Central Excise Appeal No 03 of 2005

Bhilai Engineering Corporation Limited	APPELLANT
Vs	
The Commissioner Central Excise and Customs and Another	RESPONDENT

Date of Decision : 12-12-2011

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G

Citation : (2012) 281 ELT 514

Hon'ble Judges : Satish K. Agnihotri, J;R.S. Sharma, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—Heard learned counsel for the parties.

2. The present appeal filed u/s 35-G of the Central Excise Act, 1944 (for short "the Act, 1944") arises from the final order No.03/05-B dated 24-12-2004 (Annexure A/4) passed by the Customs, Excise and Service Tax Appellate Tribunal (for short "CESTAT"), in E/Appeal No.2006/2004-NB(B) with E/CO/215/2004- NB (B), whereby the appeal filed by the respondent/Revenue was allowed.

3. By order dated 21-1-2010, this Court admitted the appeal on the following substantial question of law :

Whether the learned Tribunal was right in allowing the appeal filed by the Commissioner, Central Excise, Raipur and considering that the Coil Transfer Car is classifiable under the Heading 86.06 Railway or Tramway Goods Vans and Wagaons not self- propelled instead of under Heading No.84.55 part of Metal Rolling Mills and Rolls of Central Excise Tariff, 1994- 95

4. The facts, in brief, are that the appellant is a registered company registered under the provisions of the Companies Act and engaged in the business of manufacturing of excisable goods falling under the heads 28, 72, 73, 84, 85 & 86 of the Schedule to Central Excise Tariff Act, 1985. The appellant is also

manufacturer of a 'Coil Transfer Car' (for short "Car"), a material handling equipment, which is used in the rolling mills for shifting of hot rolled coils from one place to another within 500 meter distance. The appellant submitted a classification list No.346/94-95 w.e.f. 30-12-1995 in which 'Car' claiming classification under Chapter sub-heading No.8455.00 under heading No.84.55 with effective rate of duty 10% advalorem, as being a part of the Rolling Mill.

5. Thereafter, the Assistant Commissioner, Central Excise, Division II, Bhilai, issued a notice dated 28-7- 1995 (Annexure - A/1) and directed the appellant to show cause as to why the 'Car' should not be classified under the Chapter sub-heading No.8606.00, heading No.86.06. It was also directed that if the appellant failed to submit the reply within the stipulated period, with all supporting documents, the case would be decided ex parte. The appellant submitted his reply, giving detailed reasons and supporting documents. Thereafter, the Assistant Commissioner passed the order dated 30-6- 1998 (Annexure - A/2), approved the classification and confirmed the demand of Rs.1,78,096/-.

6. Being aggrieved by the said order, the appellant preferred an appeal before the Commissioner (Appeals). The Commissioner by order dated 21-1-2004 (Annexure - A/3) allowed the appeal and set aside the order dated 30-6-1998 by recording the finding that the 'Car' is an auxiliary equipment and is used for shifting of material from one place to another in rolling mill. Therefore, it can be considered for classification under sub-heading No.8455.00 heading No.84.55 of the Central Excise Tariff.

7. Thereagainst, the respondent herein preferred an appeal before the CESTAT. The said appeal was allowed by the CESTAT vide impugned order dated 24-12-2004 (Annexure - A/4) and set aside the order dated 21-1-2004 holding that 'Car' falls within the classification under heading No.86.06.

8. The facts are indisputable that 'Car' is used for the purpose of carrying rolled coils from one place to another within 500 meters distance. The 'Car' is operated hydrolically/electro-mechanically. The Assessing Authority issued a notice on 28-7-1995 calling upon the assessee/appellant to explain that 'Car' does not appear to be an integral part of rolling mill equipment, as it is used only for transfer of coil. Secondly; the movement of 'Car' is on railway track.

9. The response of the assessee was that 'Car' is neither railway nor tramway, goods van nor wagon and is not fitted with any rolling stock, i.e. axles, wheels, wheel sets, metal tyres, etc. 'Car' is a handling apparatus with individual function, which can be classified under chapter heading 84.79.

10. The Assessing Officer having considered all the facts held that 'Car' is classifiable under chapter heading 86.06 sub-heading 8606.00, as 'Car' is used only for transfer of coils in the rolling mill from one place to other place.

11. In the appeal, by order dated 21-1-2004, the Commissioner (Appeals) set aside the finding of the Assessing Officer and held that 'Car' is to be considered

as material handling equipment used in the rolling mill for shifting of hot rolled coils from one place to another. Thus, the same is classifiable under sub-heading 8455.00 of the Central Excise Tariff.

12. The Tribunal, in appeal preferred by the Revenue, set aside the order dated 21-1-2004 passed by the Commissioner (Appeals) holding that 'Car' is not used as an integral part of rolling mill and, as such, it does not come within the definition of auxiliary equipments. Accordingly, by the impugned order dated 24-12-2004, the order passed in appeal by the Commissioner (Appeals) was set aside and the order passed by the Assessing Officer, was restored.

13. Chapter 84.55 reads as under :

84.55 8455.00 Metal rolling mills and rolls therefor.

14. Chapter 86.06 reads as under :

86.06 8606.00 Railway or tramway, goods, vans and wagons, not self-propelled.

15. Explanatory notes {second edition 1996} of World Customs Organization states that :

Rolling mills are metal working machines consisting essentially of a system of rollers between which the metal is passed; the metal is rolled out or shaped by the pressure exerted by the rollers and at the same time the rolling modifies the structure of the metal and improves its quality. In some cases in addition to their normal functions rolling mills may be used to produce a pattern on the metal surface or to roll together two or more sheets of different metals to produce a laminated product.

Rolling mills are of various types according to the particular rolling operations for which they are designed viz. :

(A) Rolling out to reduce the thickness with a corresponding increase in length (e.g. in the rolling of ingots into blooms billets or slabs; rolling of slabs into sheet strip etc.).

(B) Rolling of blooms billets etc. to form a particular cross-section (e.g. in the production of bars rods angles shapes sections girders railway rails).

(C) Rolling tubes.

(D) Rolling of wheel blanks or wheel rim blanks (e.g. to shape the flanges of railway wheels).

16. It is further provided that operation of rolling mills requires a large number of auxiliary equipment as under :

In general the operation of rolling mills requires a large amount of auxiliary equipment such as guides roller tables handling equipment re-heating furnaces pickling tanks strip coilers shears and saws cooling beds weighing or marking

machines straightening or flattening machines control apparatus (mechanical electric or electronic) etc.

17. In the same notes, heading 86.06 - Railway or tramway, goods, vans and wagons, not self-propelled, it is stated that this heading covers vehicles for the transport of goods on railway networks (of any gauge). It also covers small vehicles or trucks for the transport of goods by rail, in mines, on building sites, in factories, warehouses, etc. These latter generally differ from true wagons, carriages, etc., in that they are not fitted with springs.

18. Thus, admittedly, the coils are not rolled out on `Car" by the pressure exerted by the rollers and at the same time the rolling does not modify the structure of the metal or improve its quality. As such `Car" does not become a part of rolling mills. The `Car" works as transporter of coils from one place to another on rail without there being any change in the character, structure or size of the coils. Strictly it does not come under railways or tramway goods vans and wagons, but if the railway tracks are used for transport of goods by rail, in mines, on building sites, in factories, warehouses, etc., the same comes under heading 86.06.

19. Reliance of the learned counsel appearing for the appellant on Collector of Central Excise, Shillong v. Wood Craft Products Ltd.¹, Collector of Central Excise, Bombay v. K.W.H. Helioplastics Ltd.² and Collector of Customs v. Kumudam Publications (P) Ltd.³ are of no assistance in the dispute involved in the instant case.

20. In Dunlop India Ltd. v. Union of India and Others⁴, three Hon"ble Judges of the Supreme Court explained the position as under :

34...It is clear that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. But once an article is classified and put under a distinct entry, the basis of the classification is not open to question. Technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance, we then see no difficulty for statutory classification under a particular entry.

21. Two Hon"ble Judges of the Supreme Court in Plasmac Machine Manufacturing Co. Pvt. Ltd. v. Collector of Central Excise, Bombay⁵, held that it is an accepted principle of classification that the goods should be classified according to their popular meaning or as they are understood in their commercial sense and not as per the scientific or technical meaning.

22. Subsequently, three Hon"ble Judges of the Supreme Court in Indian Tool Manufacturers v. Asstt. Collector of Central Excise, Nasik and Others⁶, held that if there is a general heading for the purpose of levy of Excise Duty, then every variety of goods falling under that general heading will have to be taxed under that heading.

23. Having considered the well settled principles of law, as aforestated, and also the finding of facts as recorded and admitted by the parties, the Tribunal has not committed any error in classifying the 'Coil Transfer Car' under heading 86.06. Accordingly, the substantial question of law is answered in affirmation.

24. As an upshot, the appeal, being shorn of merit, is liable to be and is hereby dismissed.

25. There shall be no order asto costs.