

(2003) 12 SC CK 0100

In the Supreme Court Of India

Case No : Civil Appeals Nos. 7229-36 Of 1996 With Nos. 178 Of 1997 And 6081 Of 1995

Collector of Central Excise, Baroda

APPELLANT

Vs

L.M.P. Precision Eng. Co. Ltd.

RESPONDENT

Date of Decision : 16-12-2003

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A

Citation : (2004) 93 ECC 137 : (2004) 112 ECR 434 : (2004) 163 ELT 290 : (2004) 9 SCC 703

Hon'ble Judges : Ruma Pal, J;P. Venkatarama Reddi, J

Bench : Division Bench

Advocate : T.L.V. Iyer, Sanjiv Sen, N.K. Bajpai and B.K. Prasad, for the Appellant; Manoj Arora and Saurabh Sharma, for the Respondent

Final Decision : Allowed

Judgement

1. A question was raised before the Tribunal whether Water well drilling rigs mounted on motor vehicle Chassis fall under the Tariff Heading 84.30 of the Central Excise Tariff Act, as claimed by the respondent assessee, or under Tariff Heading 87.05 as upheld by the Adjudicating Authority. The Tribunal upheld the respondent's contention and set aside the order of the Adjudicating Authority. However, the Tribunal confirmed the claim of the appellant limited to a particular removal in respect of which separate invoices had been submitted by the respondent. The decision of the Tribunal on the main issue has been impugned before us by the Revenue. The respondent has filed a separate appeal being CA No. 178 of 1997 in respect of the latter finding limited to the demand in respect of the particular quantity.

2. The period in respect of which the demand has been raised is 1-3-86 to 29-2-88. During this period the respondent-assessee had cleared water well drilling rigs mounted on chassis (hereinafter referred to as "the goods") after classifying the same under Tariff Heading 84.30. On 1st March 1988, a

Notification was issued by the Central Government under Rule 8 of the Central Excise Rules, 1944 granting exemption from payment of the full amount of excise duty to "drilling rigs mounted on motor vehicle chassis, falling under Heading No. 87.05 of the Schedule to the Central Excise Tariff Act, 1985. The Notification reads thus:

"Effective rate of excise duty on drilling rigs mounted on motor vehicle chassis. - In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts drilling rigs mounted on motor vehicle chassis, falling under heading No. 87.05 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), from so much of the duty of excise leviable thereon which is specified in the said Schedule, as is equivalent to the duty of excise leviable with reference to that part of the value thereof which represents the value of the chassis and the compressor used in such drilling rigs."

3. The respondent-assessee then filed classification lists claiming that the goods manufactured by it were classifiable under Tariff Heading 87.05 and as such they were entitled to the benefit of the exemption notification dated 1-3-1988.

4. On 18-4-1988 the exemption Notification referred to hereinbefore was amended by Notification No. 142 of 1988. By the amendment, the opening paragraph of the earlier notification was to read "Heading No. 84.30 or 87.05" in place of "Heading No. 87.05". Subsequent to this clarification, the respondent-assessee filed a fresh application for reclassifying the goods manufactured by it under Heading No. 84.30. The appellant issued a show cause notice subsequent thereto in which it was stated, inter alia, that the goods had been wrongly classified by the respondent for the period in question under Heading 84.30, that the goods were properly classifiable under Tariff Heading 87.05 and that the appellant had deliberately suppressed the true facts and made a misstatement of fact within the meaning of Section 11A of the Central Excises and Salt Act, 1944 (as it was then entitled) justifying the invocation of the extended period of limitation.

5. The respondent filed a reply to the show cause notice claiming that the goods had been properly classified under Tariff Heading 84.30 and that in any event there had been no suppression or misstatement within the meaning of Section 11A of the Act and as such the claim was time-barred.

6. The Adjudicating Authority considered the two tariff entries as well as the relevant explanatory note of the HSN together with the evidence in the form of statements of the employees of the respondent relating to the nature of the goods manufactured and came to the conclusion that the case made out in the show cause notice was proved and that there had been a misclassification of the goods in the classification list as submitted by the respondent for the relevant period. On the question of suppression for the purposes of limitation, the Adjudicating Authority took into consideration that the respondent was required to give a complete and true information in its classification list for approval under

Rule 173B of the Central Excise Rules (hereinafter referred to as 'the Rules'). This has not been done. The description which had been given in the invoices did not tally with the description given in the classification list for the period in question. It had not been disclosed in that classification list that the rigs in question were mounted on vehicles. It was only subsequent to the exemption notification issued on 1st March, 1988 that the description of the goods had been given justifying classification of the goods under Tariff Heading 87.05. The submission of the respondent that the invoices, the gate passes and also the contracts filed by the respondent for the relevant period gave a true description of the goods to the excise authorities was rejected by the Adjudicating Authority. It was held that the respondent was obliged to make full disclosure in the application for approval of the classification list. In addition to this, there was certain quantity where the respondent had submitted separate invoices to the excise authority, one relating to the Chassis and the other relating to the rigs mounted on such Chassis. In the circumstances, the demand raised in the show cause notice was confirmed and penalty was imposed on the assessee as well as on its directors. Confiscation of the land, building, plant, machinery belonging to the assessee was also directed but option to redeem was also given on payment of sums mentioned in the order of the Adjudicating Authority.

7. It may be mentioned at this stage that it was also the case of the Revenue as made out in the show cause notice which has been affirmed by the Adjudicating Authority that four concerns, including the assessee in question, were liable to have their clearances clubbed. The penalties as well as the redemption fine as mentioned earlier related to each of the four clubbed units. The decision of the Adjudicating Authority to club the four units has not been impugned before us.

8. Appeals were preferred by each of these four units before the Tribunal. The Tribunal, after noting the submissions of both the parties, came to the conclusion that the Harmonised System Nomenclature/(HSN) explanatory notes had been misconstrued by the Adjudicating Authority. On the factual aspect it was held that the process of manufacture of the goods in question had been mentioned in the respondents' answer to the show cause notice had not been rebutted by the Revenue. It was noted that, as pleaded, the manufacture included a specific power take off device as a result of which the motor vehicle chassis on which the drilling rig was mounted was so integrated that the Chassis could not be separately used as a motor vehicle. Therefore it was held that the goods were correctly classifiable under Chapter 34 Tariff Heading 84.30 and not under Tariff Heading 87.05. In the circumstances it was held that the question of limitation was really academic. In any event it was found that there was no wilful misstatement or suppression of fact as found by the Adjudicating Authority since the assessee had made available gate passes, price list, contract, invoices which had not been rebutted by the appellant. However, the Tribunal went on to hold that as far as the quantity in respect of which two separate invoices had been raised by the respondent as noted above, was liable to be subjected to excise valuing the rigs as inclusive of the value of truck chassis. The demand of Rs.

3,32,548.84/-, being the excise payable on these quantities was confirmed.

9. In their appeal before us the Revenue has contended that the Tribunal had in fact misconstrued the HSN which clearly provided that the goods as manufactured by the appellant were classifiable under Tariff Heading 87.05 and not 84.30. As far as the factual aspect is concerned it is submitted that the Tribunal had proceeded on the basis of no evidence whatsoever to come to the conclusion that the goods in question were integrated units. It is also pointed out that the Tribunal failed to note that after the exemption was granted in respect of goods under Tariff Heading 87.05, the respondent had itself classified the goods under that Tariff Heading. On the question of limitation it was submitted that the application for approval of the classification list for the period in question clearly showed that the respondent had not described the goods manufactured by it correctly or fully and that this clearly brought the case within the ambit of Section 11A.

10. Learned Counsel appearing on behalf of the respondent has relied upon the notes to Section XVI of the HSN to submit that the Tariff Headings had to be construed with reference to the object with which a multi-purpose machine like the goods in question had been manufactured. According to the respondent that it was therefore clear that the goods in question were classifiable with reference to its primary object, namely, drilling and that the appropriate Tariff Heading could only be Tariff Heading 84.30. On the issue of suppression it has been claimed that the Excise Authorities were fully aware of the nature of the goods which were being manufactured by the respondent. Apart from the gate passes and invoices and other documents which were checked by the Excise Authority at the time of the removal of the goods, there were other documents which were available with the Department which clearly showed the nature of the goods which were being manufactured and cleared by the respondent. On the question of filing of the classification list for the period in question under Tariff Heading 87.05, it is submitted that the Department itself was confused whether the goods manufactured by the appellant should be classified under Tariff Heading 84.30 or 87.05. Our attention has been drawn to the exemption notification which was issued immediately after the initial exemption notification in which the benefit of exemption was extended to mobile rigs mounted on vehicles classifiable under 84.30 or 87.05. As soon as the position was clarified the respondent filed an appropriate classification list claiming that the goods should be classified under Tariff Heading 84.30 as had been done prior to the issuance of the exemption notification. It is also submitted that in any event having regard to the confusion in the mind of the Department itself, it could not be said that the respondent had suppressed any fact or made any wilful misstatement for the purpose of invoking the extended period of limitation of Section 11A of the Act.

11. The Tariff Headings in question, namely, 84.30 and 87.05 read respectively as under:

"84.30 : Other moving grading, levelling, scraping, excavating, tamping,

compacting, extracting or boring machinery, for earth minerals or ores; pile-drivers and pile-extractors; snow ploughs and snow-blowers,

87.05: Special purpose motor vehicles, other than those principally designed for the transport of person or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units."

12. Both the appellant and the respondent have rested their arguments on the corresponding entries, and the relative Section and chapter Notes in the HSN for the purposes of interpreting the tariff entries in the CETA. The corresponding entries in HSN are also numbered as 84.30 and 87.05 and are included in Section XVI and XVII respectively. The explanatory note to Tariff Heading 84.30 in the HSN with regard to "Self-propelled and other mobile machines states that 84.30 covers not only fixed or stationary machines but also mobile machines, whether or not self propelled except machines mounted on transport equipment of the type falling u/s XVII. The exceptions have been detailed under three heads namely, (A) machines mounted on vehicles proper to Chapter 86; (B) machines mounted on tractors or motor vehicles proper to Chapter 87 and (C) machines on floating structure proper to Chapter 89. We are concerned with (B). Within this category there are two sub-classifications, namely, (1) machines mounted on tractor type bases and (2) machines mounted on automobile chassis or lorries. Up to this point it is clear that machines covered by 84.30 if mounted on automobile chassis or lorries are classifiable under Chapter 87 by virtue of the exceptions to the explanatory note (B)(ii). However, this sub-classification while making it clear that -

"certain machines of this heading (e.g., pile-drivers, oil well drilling machines) are often mounted on what is in fact an essentially complete automobile chassis or lorry in that it comprises at least the following mechanical features : propelling engine, gear-box and controls for gear-changing, and steering and braking facilities. Such assemblies are classified in heading 87.05 as special purpose motor vehicles,"

goes on to state that 84.30 includes,

"self-propelled machines in which one or more of the propelling or control elements referred to above are located in the cab of a machine mounted on a wheeled chassis, whether or not the whole can be driven on the road under its own power.

The heading (i.e. 84.30} further includes self-propelled wheeled machines in which the chassis and the working machine are specially designed for each other and form an integral mechanical unit. In this case, the machine is not simply mounted on an automobile chassis like the machines described in the first paragraph above, but is completely integrated with a chassis that cannot be used for other purposes and may incorporate the essential automobile features referred to above,"

13. In other words, the exception (B) to Heading 84.30 as noted is itself subject to further exceptions, namely, (i) self-propelled machines where the propelling and controlling elements are located in the cab of the machine which is mounted on the wheeled chassis; (ii) self-propelled wheeled machines in which the chassis and the working machine and specially designed for each other; and form an integral mechanical unit. In such cases, there must not be a "simple" mounting but a "complete integration" such that the chassis cannot be used for any other purpose and the machine may incorporate "the essential automobile features" of propelling or control. By carving out these further exceptions to the exception detailed under B it is clear that the machines covered by the further exceptions would come under Heading 84.30.

14. The question, therefore, before the Adjudicating Authority and the Tribunal was whether there was any evidence to support the finding that the goods in question were self-propelled machines, where the chassis and the working machines had been designed for each other and where both the chassis and the machine formed an integral unit. Whereas the Adjudicating Authority has considered the evidence on record and has come to the conclusion that there was no such integration as required and contemplated by the language of the explanatory note to Heading 84.30, the Tribunal appears to have accepted, without more, what had been stated by the assessee in answer to the show cause notice. The statement in reply to a show cause notice is not evidence, and the Tribunal erred in treating it as such without any evidence in support of the respondents' case. The decision of the Tribunal was clearly perverse being unsupported by the material on record.

15. Besides the Tariff Headings in the HSN specifically include "mobile drilling derricks" under Tariff Heading 8705.20. A derrick has been defined in the Concise Oxford Dictionary (7th Edition) at page 258 as a : "contrivance for moving or hoisting heavy weights, kind of crane with adjustable arm pivoted at foot to central post, deck, or floor; framework over oil-well or similar boring". Therefore mobile oil rigs such as those manufactured by the respondent would fall within Chapter 87 and not 84 of the HSN. This is made further clear by the note appended to the Tariff Heading 8705 of the HSN which says that the Tariff Heading includes "lorries fitted with a derrick assembly, winches and other appliances for drilling, etc."

16. In view of this specific inclusion of mobile drilling derricks in the HSN Tariff Heading 8705.20, even if we assume that the explanatory note to the Section indicates to contrary, nevertheless the express words of the Tariff Heading would prevail. This also answers the submission made on behalf of the respondent that the Section notes relevant to Chapter 84 of the HSN indicated that the goods manufactured by the respondent were classifiable under Heading 84.30. In any event the particular Section Note referred to by the respondent does not support the submission that the goods were classifiable at any material point of time under Heading 84.30. The Section Notes relied on read :

"Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function."

"Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function."

17. The Section Notes have been further expounded under different parts. Part VI: Multifunctional machines and composite machines and Part VIII: Mobile machinery have been separately detailed. Part VI pertains inter alia to "composite machines consisting of two or more machines or appliances of different kinds, fitted together to form a whole, consecutively or simultaneously performing separate functions, which are generally complementary and are described in different headings of Section XVI, and also classified according to the principal function of the composite machines". This would cover those machines which are classifiable in Chapter 84. But the machine with which we are concerned is referred to under Part VIII, namely "mobile machinery". In this Part it is said that reference should be made not only to the explanatory note to the Headings for the machines under Chapter 84.25, 84.28, 84.29 and 84.30 but also to the explanatory notes to the chapters and headings of Section XVII. That Section includes Chapter 87. We have already noted that the Tariff Heading 8705.20 clearly includes machines of the kind manufactured by the respondent and the Tribunal erred in holding to the contrary.

18. The next issue is whether the extended period of limitation could be invoked by the appellant for the purpose of raising the impugned demand against the respondent. Rule 173B of the Rules requires inter alia that every assessee shall file with the proper officer for approval a list in such form as the Collector may direct showing the "full description" of the goods manufactured. The form in which the application is required to be submitted has been prescribed as the C.L.I Form. The Form requires "a full description of each item of the goods produced, manufactured with warehouse together with the description as would appear from the invoice". Admittedly, the description of the goods given in the C.L.I. Form by the appellant for the period in question did not tally with the description in the invoices for the same period. The content of the C.L.I. Form has been excerpted in the Tribunal's order and it is clear therefrom that no attempt was made to describe the goods at all, let alone fully or truly. The requirement for disclosure was clear, unambiguous and categorical. There was no scope for misunderstanding or misinterpretation. The respondent's reliance on diverse decisions of this Court in which it was held that there could be said to be

no suppression or wilful misstatement related to cases where it was necessary to interpret a particular provision of law. Where the assessee had proceeded on a misinterpretation of a legal provision, this Court appears to have held that the bona fides could not be called into question. Those decisions are distinguishable since in this case there was no question of the assessee failing to comply with the requirement of the Rule by reason of any alleged misinterpretation of the Rule. Had the assessee given a full description of the excisable goods but claimed classification under a wrong Tariff heading, the principle enunciated by this Court and as relied upon by the respondent may have been applied but that has not happened here.

19. Apart from this we cannot ignore the fact that the respondent had, consequent upon the issuance of the exemption notification of 1-3-1988, itself classified the goods under Tariff Heading 87.05 and given a full description of the goods for the first time while claiming the exemption. It is true that subsequent to the amendment Notification dated 14-2-1988, the respondent had reapplied for reclassification under Tariff Heading 84.30. But this will not detract from the initial claim of the respondent that its goods were properly classifiable under Heading 87.05 nor does it explain why the respondent did not describe the goods fully in its application for approval of its classification list for the relevant period.

20. The Tribunal has reduced the quantum of penalty on the view taken by it and which has been found by us to be erroneous.

21. However, we do not propose to enhance the quantum of penalty as fixed by the Tribunal. The appeals are accordingly allowed to the extent stated above. There will be no order as to costs.