(2000) 03 SC CK 0046

In the Supreme Court Of India

Case No : Civil Appeal No. 11388 of 1995

Collector of Customs APPELLANT

Vs

Grasim Industries Ltd. RESPONDENT

Date of Decision : 08-03-2000

Acts Referred:

Citation : (2000) AIRSCW 4526 : (2000) 3 JT 383 Supp : (2000) 7 SCALE 700 : (2001) 1 SCC 269 : (2000) 8 Supreme 567 : (2001) 1 UC 178 : (2001) 1 UJ 175

Hon'ble Judges : S. Rajendra Babu, J;S. N. Phukan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S. Rajendra Babu and; S.N. Phukan, JJ.-The short question that arises in this appeal is whether hydrochloric acid synthesis unit of combustion chambers is classifiable under Heading 84.17(1) or Heading 68.01116(1) of the Customs Tariff Act, 1975

The appeal came up before us on reference by a Bench of two learned Judges, taking the view that the decision of this Court in Ballarpur Industries Ltd. v. Collector of Customs 1994 SC 738) holding that a part of paper-finishing machinery was classifiable under Heading 84.31 of the Customs Tariff Act, 1975 (for short "CTA") and not under Heading 68.01/16(1) of CTA, is seemingly different from what is stated in Saurashtra Chemicals v. Collector of Customs 1997 SC 1542)

The facts giving rise to this appeal fall in a short compass. The respondent imported four cases of hydrochloric acid synthesis unit of combustion chambers and claimed that they are classifiable under Heading 84.17(1) of CTA. By order dated 7-10-1982, the Assistant Collector of Customs, Bombay, rejected the claim and classified them under Heading 68.01/16(1) of CTA. The Collector of Customs (Appeals), Bombay, acceded to the contention of the respondent for their classification under Heading 84.17(1) of CTA. The appellant appealed before the

Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (for short "the CEGAT"). On 11-11-1991, the CEGAT confirmed the order of the Collector of Customs (Appeals) and dismissed the appeal. The appellant challenges the order of the CEGAT in this appeal

Mr. N. K. Bajpai, learned counsel appearing for the appellant, has contended that the respondent imported parts of machinery which are articles of graphite falling within Heading 68.01/16(1) of CTA and as Note 1(a) of Chapter 84 of CTA specifically excluded articles falling within Chapter 68 of CTA, they were wrongly held to be classifiable under Heading 84.17(1) of CTA. He submitted that in Saurashtra Chemicals v. Collector of Customs 1985 CEGAT 150 (Cegat) the larger Bench of the Tribunal by majority held that the spare parts of the machinery made of carbon were classifiable under Heading 68.01/16 of CTA which was approved by this Court in Saurashtra Chemicals v. Collector of Customs (1997 SC 1542). Therefore, the order under appeal has to be set asideIn support of the order under appeal, Mr. Joseph Vellapally, learned Senior Counsel appearing for the respondent drew our attention to the titles of Chapters 68 and 84 of CTA to point out that plants and machinery fell within Heading 84.17(1) of CTA and not within Heading 68.01/16(1) of CTA. According to the learned counsel, Note 1(a) to Chapter 84 of CTA has no application to machinery or part of machinery covered by Heading 84.17(1) of CTA. As such the Collector of Customs (Appeals) as well as the CEGAT rightly classified the goods under Heading 84.17(1) of CTA

Inasmuch as the controversy relates to the interpretation of Headings 68.01/16(1) and 84.17(1) of CTA, it would be useful to quote them here

"CHAPTER 68

Articles of stone, of plaster, of cement, of asbestos, of mica and of similar materials NOTES

This Chapter does not cover

(a)-(n) * * *

Heading Sub-heading No. and description Standard Central No. tion of article rate of duty Excise Tariff Item

68.01/16 Articles of natural or artificial 22-F, 23-C, stone, of agglomerated natural 51 or artificial abrasives, of plastering material, of cement, of concrete, of asbestos, of asbestos-cement or cellulose fibre-cement, or of mica; articles of vegetable materials agglomerated with mineral binders; mineral wools; expanded mineral materials; articles of other mineral substances, not elsewhere specified or included

(1) Not elsewhere specified 100%

(2) Grinding stones, grinding wheels and 40% the like, of natural stone, of agglomerated natural or artificial abrasives, and segments or other finished parts of such stones and wheels but excluding hand-polishing stones, whetstones,

oilstones, and hones." *

A perusal of the title of Chapter 68 of CTA and the description of the sub-heading shows that what is brought in thereunder are articles of stone, plaster, cement, asbestos, mica or similar materials. There is no scope to bring within that Chapter machinery and mechanical appliances and parts thereof

"CHAPTER 84 Boilers, machinery and mechanical appliances; parts thereof NOTES

1. This Chapter does not cover

(a) millstones, - grindstones and other articles falling within Chapter 68; * * * 2.-5. * * *

Heading Sub-heading No. and descrip- Standard Central No. tion of article rate of duty Excise Tariff Item * * *

84.17 Machinery, plant and similar laboratory equipment, whether or not electrically heated, for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilising, pasturising, steaming, drying, evaporating, vaporising, condensing or cooling, not being machinery or plant of a kind used for domestic purposes; instantaneous or storage water-heaters, non electrical

1. Not elsewhere specified 40%

2. Machinery and equipment for 60% food and drink other than those used for treating milk; instantaneous or storage water-heaters, non-electrical; machinery and equipment imported for use in air conditioning." *

The title of Chapter 84 of CTA leaves no room for doubt that the goods falling within it are boilers, machinery, and mechanical appliances and parts thereof. The description and the sub-headings enumerate various categories of machinery and appliances falling thereunder. At the beginning of the Chapter are Notes which specify what articles are excluded from that Chapter

A reading of Note 1(a) on which reliance is placed by Mr. Bajpai, suggests that it excludes millstones, grindstones and other articles falling within Chapter 68 from being classified under Heading 84.17(1) of CTA

There can be no controversy about the proposition that if the goods in question are machinery, plant and similar laboratory equipment or parts thereof, they fall within Chapter 84 of CTA; but if they are millstones, grindstones or other articles that fall within Chapter 68 of CTA, they get excluded from Chapter 84A perusal of the order of the Tribunal shows that though the combustion chamber of the goods in question is made of graphite, they constitute a complete unit, consisting of three parts fitted with burners and other accessories forming part of synthesis unit of caustic soda plant and thus an equipment. In that equipment hydrogen is burnt with chlorine and thereby a new product - hydrochloric acid - is produced. In the latter part of the judgment the Tribunal recorded the following finding

"Further there is no dispute that what they have imported is for combustion chambers and drawing also indicates that the combustion chamber consist of three parts, that is, upper shell, intermediary shell and lower shell along with fittings. Based upon the records and functioning of the imported parts we are of the opinion that they constitute a complete unit." *

In view of this categorical finding, there can be no hesitation in holding that the goods in question fall within Heading 84.17(1) of CTA unless it is shown they being millstones, grindstones and other articles falling within Chapter 68 have to be excluded from Heading 84.17(1) of CTA in view of Note 1(a) of Chapter 84. Obviously the articles in question are not millstones, grindstones or the like. We have carefully gone through various sub-headings of Chapter 68 of CTA and we are of the view that the contention that the goods in question fall within Chapter 68 has no substance

In the case of Saurashtra Chemicals (1985 CEGAT 150 (Cegat) a larger Bench of the Tribunal by majority took the view that carbon rings and carbon seals which are used as spare parts in turbosets and compressors fall within the Heading 68.01/16(1) of CTA and the minority held that they fall within Heading 84.65 of the Customs Tariff Schedule. The view of the majority was approved by this Court in Saurashtra Chemicals case (1997 SC 1542). No reasons are given in that case. But a perusal of the order of the Tribunal shows the question there related to articles which were spare parts made of carbon and not to a complete unit or an equipment, unlike in the present case where the goods constitute a complete unit. Also, the goods here are not made entirely of graphite; only a part thereof is graphite. Further in Saurashtra Chemicals case 1997 SC 1542 there was an agreement between the parties that those articles would fall both within Heading 68.01/16(1) as well as within Heading 84.65In Ballarpur Industries Ltd. case 1994 SC 738 granite press rolls fitted with mild steel shafts and end-plates and its cavities filled with concrete were admitted to be a part of the paper-finishing machinery. Disagreeing with the judgment of the Tribunal that parts of the machinery were classifiable under Chapter 68 of CTA, this Court held that they were classifiable under Heading 84.31 of CTA. The distinction between Saurashtra Chemicals case 1997 SC 1542) and Ballarpur Industries case 1994 SC 738) is that in the former case the articles made of carbon were conceded to fall both within Heading 68.01/16(1) as well as within Heading 84.65 being spare parts of machines whereas in the latter case the goods were part of machinery not falling within Chapter 68 and were not made entirely of granite

In the instant case, in view of the finding recorded by the Tribunal that the goods in question constitute a complete unit, an equipment, and are not made only of graphite they are clearly classifiable under Heading 84.17(1) of CTA. We, therefore, find no illegality in the order of the Tribunal. The appeal fails and it is accordingly dismissed with costs.

