
(2004) 12 SC CK 0043

In the Supreme Court Of India

Case No : Civil Appeal No's. 3532-3560 of 1997

Collector of Customs, Bangalore and Another

APPELLANT

Vs

Maestro Motors Ltd. and Another

RESPONDENT

Date of Decision : 07-12-2004

Acts Referred:

Customs Act, 1962 — Section 25
Customs Tariff Act, 1975 — Section 3
Interpretative Rules — Rule 2

Citation : (2004) AIRSCW 7439 : (2004) 97 ECC 633 : (2004) 117 ECR 909 :
(2004) 174 ELT 289 : (2005) 11 JT 289 : (2004) 10 SCALE 578 : (2004) 10
SCALE 253 : (2005) 9 SCC 412 : (2005) 4 Supreme 604

Hon'ble Judges : S. N. Variava, J;AR. Lakshmanan, J

Bench : Division Bench

Advocate : R. Mohan, Additional Solicitor General, V.G. Pragasam and B. Krishna Prasad, for the Appellant; R.S. Hegde, Chandra Prakash, Savitri Pandey, K.R. Nagaraja for the Respondent No. 1 and Sunil Gupta Pramod Dayal, Jatin Zaveri and Praveen K. Pandey for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

S.N. Variava, J.—These Appeals are against the Judgment of the Customs Excise and Gold (Control) Appellate Tribunal (for short CEGAT) dated 10th September, 1996. This Judgment is in respect of two companies, namely, M/s. Maruti Udyog Ltd. and M/s. Maestro Motors Ltd. (earlier known as M/s. Sipani Automobiles Limited). Both these Companies are manufacturers of motor cars. Apart from this common fact, the other facts are not identical. Even though CEGAT has disposed of the Appeals by a common Order, the cases of these two parties would have to be dealt with separately by this Court.

2. First, the case of M/s. Maruti Udyog Ltd. is being considered.

3. On 23rd April, 1982 M/s. Maruti Udyog Ltd. applied for grant of an Industrial Licence for manufacturing passenger cars and light duty utility vehicles. They

also entered into a joint venture agreement and collaboration with M/s. Suzuki Motors Company Ltd. M/s. Maruti Udyog Ltd. imported from M/s. Suzuki Motors Company Ltd. two shipments i.e. 24 CKD packs (completely knocked down condition) and 48 CKD packs respectively of passenger car components. They filed two Bills of Entry bearing Nos. 118/345 and 1412/261 for clearing the goods which were claimed to be components of motor vehicles under Tariff Heading 8704 of the Customs Tariff. They also claimed benefit of Notification Nos. 29/83 and 29A/83.

4. By two Orders dated 9th September, 1983 and 30th September, 1983, the Adjudicating Authority held that the imported components being complete cars in CKD packs had the essential character of the finished product and as such the consignments were to be treated as motor cars and not components. It was held that M/s. Maruti Udyog Ltd. was not entitled to the benefit of the Notifications as the Notifications were only for components. It was further held that in any case M/s. Maruti Udyog Ltd. had not complied with the conditions of the Notifications.

5. In the Appeal filed by M/s. Maruti Udyog Ltd., the Commissioner (Appeals) by an order dated 30th April, 1985 held that the goods were component parts and not motor cars. It was also held that the Company was entitled to the benefit of Notification No. 29/83.

6. CEGAT has, by a 2 to 1 Judgment, held that both the Companies are entitled to benefit of the Notifications.

7. The questions for consideration by this Court are whether the CKD packs imported into the country could be considered to be motor cars and not components and secondly, whether M/s. Maruti Udyog Ltd. are entitled to the benefit of Notification No. 29/83.

8. The relevant Tariff Items are 87.02 and 87.04, which read as follows:

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

(1) (2) (3) (4)

87.02 Motor vehicles for the transport of persons, goods or materials (including sports motor vehicles, other than those of Heading No. 87.09/12): (1) Not elsewhere specified 60% 34

87.04/06 Chassis fitted with engines, bodies (including cabs) and parts and accessories of the motor vehicles falling within Heading No. 87.01, 87.02 or 87.03 :

34, 34A

(1) Not elsewhere specified 100%

(2) Parts designed for the articles covered by sub- heading No. (1) of Heading No. 87. 01 and subheading No. (3) of Heading No. 87.02. 40%

In considering which Tariff Item is to apply one has to take note of the general rules of Interpretation of the Harmonized System, Rule 2(a) of which reads as follows:

"Rule 2(a): Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled."

Thus, as per this interpretative Rule, even though an article is incomplete or unfinished when it is presented for clearance, if that article has the essential character of the complete article and/or even though the complete or finished article is presented in an unassembled or disassembled form the classification must be as a complete article. In this case, it is fairly not being denied that the components were imported in a CKD packs. Thus what was imported was completely knocked down cars. The components imported had the essential character of a complete car even though presented in unassembled form. As per interpretative Rule 2(a) even though presented unassembled they have to be classified as a complete article. Thus, for purposes of clearance the components had to be classified as a car under Tariff Item 87.02. The finding of the Commissioner (Appeals) to the contrary is clearly erroneous and requires to be and is hereby set aside.

9. The question then arises as to whether M/s. Maruti Udyog Ltd. is entitled to benefit of Notification No. 29/93. The said Notification reads as follows:

"In exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest to hereby exempt components (including components of fuel-efficient motor cars in semi-knocked down packs and completely knocked down packs) required for the manufacture of fuel-efficient motor car of engine capacity not exceeding 1000 cubic centimeters from :-

(a) So much of the duty of customs which is leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), as is in excess of the amount calculated at the rate of 25% ad-veloram; and

(b) the whole of the additional duty leviable thereon u/s 3 of the said Customs, Tariff Act.

Subject to the following conditions, namely:-

(i) the exemption contained herein shall be applicable only to those components (including components of fuel-efficient motors cars in semi- knocked down packs and completely knocked down packs) which are covered by lists certified by an officer not below the rank of an industrial Advisor or Additional Industrial Adviser in the Directorate General of Technical Development and an Officer not below the

rank of a Joint Secretary in the Ministry of Industry (Development of Heavy Industry) to be required for the manufacture of fuel efficient motor cars of engine capacity not exceeding 1000 cubic centimeters;

(ii) the importer produces evidence to the Assistant Collector of Customs to the effect that the said components (including components of fuel-efficient motor cars in semi-knocked down packs and completely knocked down packs) have been imported by such importer under a programme duly approved by the Ministry of Industry (Department of Heavy Industry) and the Industrial Adviser or the Additional Industrial Adviser of the Directorate General of Technical Development in the Ministry of Industry for the manufacture of fuel efficient motor cars of engine capacity not exceeding 1000 cubic centimeters; and

(iii) the importer shall, within such period as the Asstt. Collector of Customs may specify in this behalf, produce a certificate from the Asstt. Collector of Central Excise in whose jurisdiction the factory manufacturing such fuel-efficient motor cars is situated to the effect that such imported components (including components of fuel-efficient motor cars in semi-knocked down packs and completely knocked down packs) have been used in the manufacture of fuel-efficient motor cars of engine capacity not exceeding 1000 cubic centimeters.

Explanation:- For the purpose of this notification, "fuel efficient motor car" in respect of a motor car of engine capacity not exceeding 1000 cubic centimeters means a motor car which is certified to run not less than 20 kilometers per liter of petrol by an officer not below the rank of a Joint Secretary in the Ministry of Industry (Development of Heavy Industry) on the basis of the tests (hereinafter referred to as the fuel- efficiently test) carried out by the vehicle Research Development Establishment of the Ministry of Defence, Ahmednagar (Maharashtra) or the Automotive Research Association of India, Pune (Maharashtra), having regard to the following, namely :-

(a) the fuel-efficiency test shall be conducted with a pay load of 300 kilograms;

(b) the fuel-efficiency test shall be conducted using petrol having an octane level not exceeding 87; and

(c) the fuel efficiency test shall be carried out on a selected level test track at a steady speed of 50 kilometers per hour for a minimum stretch of one kilometer and the average of 20 runs, comprising of 10 runs in each direction shall be taken for carrying out the test and the test figures shall be corrected to sea level and to +25% C ambient temperature.

2. This Notification shall be in force upto an inclusive of the 24th day of February 1988."

It is settled law that to avail the benefit of a notification a party must comply with all the conditions of the Notification. Further, a Notification has to be interpreted in terms of its language. If in the Notification exemption is granted with reference to tariff items in the First Schedule to the Customs Tariff Act,

1975, then the same rules of interpretation must apply. In that case the goods will be classified, even for the purposes of the Notification, as they are classified for purposes of payment of customs duty. But where the language is plain and clear effect must be given to it. In this Notification what is exempted is components, including components of fuel efficient motor cars in semi-knocked down packs and completely knocked down packs. Undoubtedly, for purposes of levy of custom duty, by virtue of Interpretative Rule 2(a), the components in a completely knocked down pack would be considered to be cars. But in view of the clear language of the Notification the components including components in completely knocked down packs are exempted. Effect must be given to the wording of the Notification. Thus components in completely knocked down packs would get the exemption under this Notification, even though for purposes of classification they may be considered to be cars.

10. It was however urged that even though these components were covered by the Notification M/s. Maruti Udyog Ltd, would not be entitled to the benefit of the Notification inasmuch as they had not complied with the conditions of the Notification. It was submitted that they had not submitted the certificates required under Sub-clauses b(i) and b(iii) of the said Notification. This was disputed by counsel on behalf of M/s Maruti Motors Ltd.. We find that the Adjudicating Authority has categorically held that these certificates were not produced. On the other hand, the Commissioner (Appeals) and CEGAT have held that the certificates produced were sufficient. Unfortunately, neither side has shown to us what were the certificates which were to be produced before the Adjudicating Authority. In the absence of those certificates we cannot decide whether or not the conditions imposed by Sub-clauses b(i) and b(iii) have been fulfilled. It will therefore be necessary to remit the matter back to CEGAT for reconsideration of this aspect after clarifying what is required.

11. It is clear that under Sub-clauses b(i) of the said Notification the components imported must be those which are covered by lists certified by an Officer not below the rank of an industrial Advisor or Additional Industrial Adviser in the Directorate General of Technical Development and an Officer not below the rank of a Joint Secretary in the Ministry of Industry (Development of Heavy Industry). Such a list must show that the components are required for manufacturing of fuel efficient motor cars of engines capacity not exceeding 1000 cubic centimeters. A mere certificate that the components are required for manufacture of motor vehicles or that M/s Maruti Udyog Ltd. has been licenced to manufacture such motor vehicles would not be sufficient. What would have to be ascertained by CEGAT is whether any lists, as per Sub-clause b(i) had been produced before the Adjudicating Authority and whether the components are as per that list.

12. Under Sub-clause b(iii) of the Notification, a certificate of fuel efficiency of same type of car or a prototype would not be sufficient. What would be required is a certificate from the Assistant Collector of Central Excise, in whose jurisdiction

the factory is situated, to the effect that the components imported (in completely knocked down packs) had been actually used in the manufacture of fuel efficient motor cars of an engine capacity not exceeding 1000 cubic centimeters. The fuel-efficiency Certificate has to be issued in respect of a car after carrying out the test set out in the Explanation to Sub-clause b (iii). Of course such a test need not be of each and every car manufactured from the components. A test of a prototype or a single car would be sufficient. But the certificate must show that the components were actually used in manufacture of fuel efficient motor cars of engine capacity not exceeding 1000 cubic centimeters.

13. With these clarifications we remit the matter of M/s. Maruti Udyog Ltd. back to CEGAT for deciding whether the required certificates were produced. It is clarified that these certificates should have been produced before the Adjudicating Authority. It would not be open for the CEGAT to allow M/s. Maruti Udyog Ltd. to produce any new or other certificate which had not already been produced before the Adjudicating Authority. If the certificates as required are available, then M/s. Maruti Udyog Ltd. will be entitled to the benefit of the Notification No. 29/83. If the certificates as required are not available then M/s. Maruti Udyog Ltd. will undoubtedly not be entitled to the benefit of Notification No. 29/93. In that event for purposes of payment of custom duty the components will have to be classified as a car and duty will have to be paid under Tariff Item 82.02.

14. Before parting we must take note of one further aspect. It was submitted that for the subsequent imports the Department has granted the benefit of the Notification and allowed clearance of the components in CKD packs by granting benefit of the Notification. It was submitted that this also showed that M/s. Maruti Udyog Ltd. is entitled to the benefit of the Notification. We cannot accept such a submission. Those clearances may be because the conditions of the Notification were fulfilled in respect of those imports. Thus, merely because in those cases clearances have been allowed by itself cannot be a ground for allowing benefit of the Notification in this case.

15. That now brings us to the case of M/s. Maestro Motors Ltd. On 17th November, 1993 and 5th May, 1992, M/s. Sipani Automobiles Limited (as it then was) entered into collaboration with M/s. Rover U.K. for manufacture of Montego cars. They imported 217 sets of cars consisting of body assembly (complete with accessories), with gear, engine assembly etc. and also components such as wind screen assembly, wheel rims, glass assembly, radiator assembly, front and back suspension, fuel tank assembly etc. In effect they were importing the entire car in completely knocked down condition. M/s. Sipani imported all these items by filing 11 Bills of Entries with the Bombay Customs and the rest 14 Bills of Entries with the Madras Customs. They claimed the goods to be components and also claimed benefit of Notification No. 72/93.

16. The Adjudicating Authority held that between the imports in Bombay and Madras entire cars had been imported in completely knocked down condition.

The components were thus classified as cars. It was also held that the Company was not entitled to the benefit of Notification No. 72/93 as that Notification only gave benefit to parts and components.

17. CEGAT has by the impugned majority Judgment allowed the Appeal even of M/s. Maestro Motors Ltd. It is held that M/s. Maestro Motors Ltd. are entitled to the benefit of Notification No. 72/93.

18. We have, whilst dealing with the case of M/s. Maruti Udyog Ltd., set out how for the purposes of payment of custom duty such goods are to be classified. As stated above, such components are nothing but cars in knocked down condition. Applying Interpretative Rule 2(a) such components are to be classified as cars.

19. The question then arises as to whether M/s. Maestro Motors Ltd. is entitled to the benefit of Notification No. 72/93. As has been stated hereinabove, whilst dealing with the case of M/s. Maruti Udyog Ltd., a Notification has to be interpreted in accordance with the language used in the Notification. Where the language is clear and unambiguous an interpretation which does not tally with the language cannot be given. Notification No. 72/93 reads as follows:

"In exercise of the powers conferred by Sub-section (1) of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts components and parts of motor vehicles, falling within Chapter 87 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and goods specified in column (3) of the Table hereto annexed and falling under the heading Nos. of the First Schedule, specified in the corresponding entry in column (2) of the said Table, when imported into India, for the manufacture of motor vehicles falling within Chapter 87 of the said First Schedule, from :

(a) so much of the duty of Customs which is leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as is in excess of the amount calculated at the rate of 50 per cent. Ad valorem; and

(b) the whole of the additional duty leviable thereon u/s 3 of the said Customs Tariff Act, subject to the following conditions, namely :-

(i) the exemption contained herein shall be applicable only to those goods which are required for the manufacture of motor vehicles;

(ii) that the importer shall, within such period as the Assistant Collector of Customs may specify in this behalf, produce a certificate from the Assistant Collector of Central Excise in whose jurisdiction the factory manufacturing motor vehicles using the goods imported under this notification is situated to the effect that the said imported goods have been used in the manufacture of motor vehicles; and

(iii) the importer furnishes an undertaking to the effect that:-

(a) the said goods shall be used for the purpose specified above;

(b) an account of the said goods received and consumed in the place of manufacture for the aforesaid purpose shall be maintained in the manner specified by the Assistant Collector of Customs;

(c) he shall produce the extract of such account duly certified by the jurisdictional Assistant Collector of Central Excise evidencing receipt of the said goods in the premises of the place of manufacture and the use thereof for manufacture of motor vehicles within a period of three months or such extended period as the Assistant Collector of Customs may allow; and

(d) he shall pay, on demand, in the event of his failure to comply with (a), (b) or (c) above an amount equal to the difference between the duty leviable on such quantity of the said imported goods but for the exemption contained herein and that already paid at the time of the importation.

Sl. No. Heading No. Description of goods

(1) (2) (3)

1. 40.09 Brake hoses/radiator hoses with or without fittings.

2, 40.10 V- Belts

3. 40.11 Tyres

4. 40.13 Tubes

5. 40.16 Weather strips, oil seals .

6. 70.07 Safety glass

7. 70.09 Rear-view mirrors

8. 73.18 Screws, bolts, nuts and washers

9. 73.20 Leaf springs and helical springs

10. 83.01 Locks

11. 84.07 Spark ignition reciprocating internal combustion piston engines (Petrol Engines).

12. 84.08 Compressor Ignition internal combustion piston engines (Diesel Engines)

13. 84.09 Parts of engines covered under heading No. 84.07 and 84.08

14. 84.13 Fuel, lubricating or cooling medium pumps for internal combustion piston engines

15. 16. 84.14 84.82 Turbocharger Ball or roller bearings

17. 84.83 Crankshaft, plain shaft bearings, gears, fly wheels, clutches, universal joints

18. 84.84 Gaskets

19. 85.11 Spark plugs, fly-wheel magneto, distributor, ignition coil, starter motor generator (alternator) and cut outs.

20. 85.12 Wind screen wipers, head lights and indicator lights

Thus, under this Notification what is exempted are components and parts falling within Chapter 87 of the First Schedule to the Customs Tariff Act, 1975 and goods specified in Column 3 of the Table. Thus in this Notification, unlike as in Notification No. 29/93, components in CKD packs are not exempted. Under this Notification it is only components and parts which fall within Chapter 87 are exempted. The wording is very clear. For a component and part to be exempted it must be a component or part within Chapter 87 of the First Schedule to the Customs Tariff Act, 1975. If, by virtue of interpretative Rules, for purposes of the First Schedule to the Customs Tariff Act, 1975 the imported goods are not considered to be components and parts, then for purposes of this Notification also they cannot be said to be components and parts. In our view, CEGAT has erred in holding that the interpretative Rule 2(a) does not apply to a Notification. When a Notification exempts goods falling within the First Schedule to the Customs Tariff Act, 1975, then the goods must be classified in the same manner both for purposes of payment of custom duty as well as for purposes of exemption/benefit under that Notification. However if the wording of the Notification show that an item is specifically exempted then the exemption will apply to that item even though for purposes of classification it may be considered to be something else. To take this very case as in illustration, where like in Notification No. 29/83 components including components in CKD packs, were given benefit of exemption those components would get exemption even though for purposes of payment of duty they are classified as cars. But where, as in this case, components and parts falling within Chapter 87 are exempted, then the components and parts must be considered to be components and parts for purposes not just for exemption but also for payment of custom duty. If for purposes of payment of custom duty they are not deemed to be components and parts, then they are also not components and parts for purposes of the Notification. In other words when, in a Notification, the exemption is with reference to an item in the First Schedule to the Customs Tariff Act, 1975, then the interpretative Rules would equally apply to such Notification. In such cases, if they are not components and parts for the purposes of payment of custom duty they would not be components and parts even for the purposes of the Notification. Thus, M/s. Maestro Motors Ltd. are not entitled to the benefit of Notification No. 72/93.

20. It was however urged that this Notification exempts 20 components and parts. It was submitted that M/s. Maestro Motors Ltd. must be given benefit of those 20 components and parts. We are unable to accept this submission. These 20 components and parts would get exemption only provided they were imported as components and parts. If they are imported as components and parts in CKD

pack, then the pack as a whole is a car by virtue of the interpretative rule. In such a case even these components would not be entitled to exemption.

21. Under these circumstances, the Order of CEGAT in respect of M/s. Maestro Motors Ltd. cannot be sustained and is hereby set aside. The Order of the Adjudicating Authority is restored.

22. These Appeals stand disposed of accordingly. There will be no order as to costs.