(2002) 10 SC CK 0047

In the Supreme Court Of India

Case No : Civil Appeal No. 2939 Of 1995

Indian Hydraulic Industries APPELLANT

Vs

Collector of Central Excise RESPONDENT

Date of Decision : 08-10-2002

Acts Referred:
Central Excise Rules, 1944 — Rule 9
Central Excises and Salt Act, 1944 — Section 11A

Citation : (2003) 152 ELT 12 : (2003) 11 SCC 751

Hon'ble Judges : S. N. Variava, J;Brijesh Kumar, J

Bench : Division Bench

Advocate : V. Lakshmikumaran, A.R. Madhav Rao, Alok Yadav, Vishwanath Shukla and V. Balachandran, for the Appellant; Jaideep Gupta K.C. Kaushik and B. Krishna Prasad, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal is against an order dated 22nd October, 1993 passed by the Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as "CEGAT"). In the impugned order, the Judicial Member has taken one view whereas the two Technical Members have taken a different view.

2. The appellants carry on the activity of fabricating, on duty paid motor vehicle chassis, what is known as a ''special purpose motor vehicle''. These special purpose motor vehicles are used in the airports for various purposes like carrying the staircase to the aircraft or for transporting the baggage into the hold of the airport or for transporting beverages and food items to the aircraft.

At the relevant period, the Tariff Items read as follows :

HeadingNo. Sub-heading No. Description of goods Rate of duty

1 2 3 4

87.01 8701.00 Tractors (other than tractors of heading No. 87.09) 15%

87.02 8702.00 Public transport type passenger motor vehicles 25%

87.03 8703.00 Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading No. 87.02), including station wagons and racing cars. 40%

87.04 8704.00 Motor vehicles for the transport of goods. 25%

87.05 8705.00 Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper tomes, spraying lorries, mobile workshops, mobile radiological units) 25%

87.06

Chassis fitted with engines, for the motor vehicles of heading Nos. 87.01 to 87.05.

8706.10 For the vehicles of heading No. 87.01 15%

8706.20 - For the vehicles of heading No. 87.02 25% plus Rs. 6000 per chassis

8706.30 - For the vehicles of heading No. 87.03 40%

8706.40 - For the vehicles of heading No. 87.04 25% plus Rs. 6000 per chassis

8706.50 - For the vehicles of heading No. 87.05 25%

87.07 8707.00 Bodies (including cabs) for the motor vehicles of heading No. 87.01 to 87.06 25%

The Government issued Notification No. 162 of 1986 dated 1st March, 1986. The relevant portion of this notification reads as follows :

"Effective rates of duty for motor vehicles and parts thereof. - In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 70/86-Central Excises, dated the 10th February, 1986, the Central Government hereby exempts the goods specified in column (3) of the Table hereto annexed and falling under heading Nos. of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), specified in the corresponding entry in column (2) of the said Table, from so much of the duty of excise leviable thereon which is specified in the said Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table, subject to the conditions, if any, laid down in the corresponding entry in column (5) thereof.

THE TABLE

Sl. No. Heading No. Description of Rate goods Conditions

XXX XXX XXX XXX

11. 87.05 Special purpose motor vehicles Nil If the appropriate duty of excise has been paid on the chassis of such vehicles and the equipments used in the manufacture of such vehicles.

3. The appellants did not pay any excise duty on the special purpose motor vehicle manufactured by them on the basis that this Notification exempted them from payment of duty.

4. A demand notice came to be issued on 18th April, 1991. The appellants replied to the notice. The Collector of Central Excise held that the appellants were not entitled to the benefit of the notification as duty has not been paid on the equipments used by them in the manufacture of special purpose motor vehicles. The Collector, by his order dated 29th April, 1992,levied excise duty and penalty on the appellants.

5. The appellants then filed an appeal before CEGAT. That appeal has been disposed of by the impugned order. The Judicial Member has recorded that tariff has been paid on the chassis. This is not disputed before us also. The Judicial Member has recorded that tariff has been paid on all inputs used by the appellants in the manufacture of the special purpose motor vehicles. According to the Judicial Member, as duty has been paid on all inputs the appellants are entitled to exemption of the notification. The Technical Members, however, hold that what is ultimately manufactured is a body. They held that a body is liable to excise duty under Tariff Item No. 87.07. They held that as duty has not been paid on the body the appellants are not entitled to the exemption of the notification. The appellants have filed this appeal challenging this majority view of the Technical Members.

6. The appellants are admittedly manufacturing "special purpose motor vehicles". A special purpose motor vehicle admittedly falls under Tariff Item No. 87.05. The other Tariff Items deal with "Tractors", "public transport vehicles", "motor cars", etc. Tariff Item No. 87.06 deals with the "motor chassis fitted with engines, whether or not with cab." Tariff Item No. 87.07 deals with "bodies (including a cab)". Each of these Tariff Items is dealing with a separate class. A special purpose motor vehicle or a transport vehicle or a motor car, would necessarily have a chassis as well as a body. Yet when cleared as a special purpose motor vehicle or a transport vehicle or a motor car, they would not fall under Tariff Item Nos. 87.06 and/or 87.07. Tariff Item No. 87.06 will apply only when a chassis is being sold separately as a chassis. Tariff Item No. 87.07 will apply only when a body is being sold separately as a body. However when a vehicle is assembled, then it would fall under the specific Tariff Item in respect of that vehicle.

7. Admittedly, the Tariff Item sought to be applied in the demand notice is Tariff Item No. 87.05. The exemption of the notification is being denied to the appellant on the ground that they had not paid duty on the equipment used. The body manufactured by the appellants and fitted on the duty paid chassis is considered as being equipment. To be noted that this is not a case where a

demand is made on the footing that at an intermediate stage a body comes into existence and that that excise duty is payable on that body. The appellants are not clearing the body by itself. The appellants are clearing "special purpose motor vehicles". As stated above the special purpose motor vehicle, necessarily would have a chassis as well as a specialised body. What the notification exempts is a "special purpose motor vehicle". Of course, the exemption (from payment of duty) is available provided excise duty has been paid on the chassis and the equipment used in its manufacture. Admittedly, excise duty has been paid on the chassis. Excise duty has also been paid on all the inputs used in the manufacture of this vehicle. We are unable to accept the reasoning in the impugned order that term ''equipment used'' in the notification refers to the final body manufactured by the appellants. We find it rather strange that the Technical Members seek to justify such a reasoning on the ground that there is a separate Tariff Item No. 87.07. It was nobody''s claim that the appellants'' special purpose motor vehicle falls under Tariff Item No. 87.07. As stated above, Tariff Item No. 87.07 would only apply if a body was being sold separately by itself. The term ''equipment''used in the notification necessarily refers to the material and the inputs which have gone into manufacturing the special purpose motor vehicle. As has been correctly held by the Judicial Member duty has been paid on all the inputs used by the appellants. As duty has been paid on all the inputs and as duty has been paid on the chassis, the appellants are covered by the exemption notification. In our view the appellants are entitled to the benefit of the exemption notification.

8. We, therefore, set aside the impugned order and hold that the appellants are entitled to exemption of the notification No. 162 of 1986, dated 1st March, 1986.

9. Reliance was placed on Rule 9 of Central Excise Rules and it was submitted that at an intermediate stage, equipments like Hydraulic Jacks, Cranes, Conveyor Belts are manufactured by the appellants. It was submitted that excise duty had to be paid on these equipments. It was submitted that as duty was not paid on these "equipments" the appellants were not entitled to exemption under the notification. We see no substance in this submission. As stated above, this is not a case where demand is made on the basis that an intermediate product was being manufactured and that duty was payable on that item. Such a claim, if there were such a claim, would be under some other Tariff Item. The demand notice was not on the basis that at an intermediate stage a body is manufactured and thus duty was payable under Tariff Item No. 87.07. In this case the demand notice is on the admitted footing that "special purpose motor vehicle", fell under Tariff Item No. 87.05. The only question for consideration is whether the term "equipment" in the notification refers to the inputs used for manufacture of such a vehicle or not. As stated above in our view it does. We clarify that we have not considered the question whether an intermediate product is manufactured by the appellants and if so whether any duty, under some other Tariff Item, is payable on that.

10. The appeal is, accordingly, allowed. There will be no order as to costs.

