

(1992) 03 MAD CK 0020

In the Madras High Court

Case No : Writ Petition No's. 10880, 10913 of 1983, 456/84, 7075 and 7076 of 1985

Motor Industries Co. Ltd.

APPELLANT

Vs

Assistant Collector of Customs

RESPONDENT

Date of Decision : 30-03-1992

Acts Referred:

Customs Tariff Rules, 1975 — Rule 2

Citation : (1993) 41 ECC 33 : (1993) 45 ECR 65 : (1992) 62 ELT 13

Hon'ble Judges : Govindasamy, J

Bench : Single Bench

Advocate : Shri R. Nandakumar, for the Appellant; Shri P. Narasimhan, Senior C.G.S.C., for the Respondent

Judgement

1. The Petitioners in these Writ Petitions M/s. Motor Industries Co., Ltd., are a public limited company and have been carrying on business inter alia of the manufacture and sale of diesel fuel injection equipment and parts thereof at their factory in Bangalore. The petitioners imported two consignments of semi-finished crude steel forgings viz., camplates for distributor pumps and three consignments of crude steel forgings of adjusting pins used in governor assembly. The petitioners paid duty under Heading 84.10(3) at 100% plus 20% plus C.V. duty at Rs. 165/- per metric tonne. The petitioners made a refund claim before the Assistant Collector of Customs, Madras, contending that the goods imported by them attracted classification as "other articles of iron steel not elsewhere specified" attracting 60% basic duty and 15% additional duty, and countervailing duty at Rs. 165 per M.T. in terms of Notification No. 254/CUS/76 and that the assessment made under Heading 84.10(3) at 100%

plus and 20% was not proper and incorrect and hence made a claim for refund of the excess amount collected therefor. The Assistant Collector by

his proceedings rejected the refund claim made by the petitioners holding that it is seen from the samples of imported semi-finished adjusting pin

that it had assumed the special characteristics of the finished component. Hence the original assessment is in order. The Assistant Collector of

Customs (Refunds) made a similar identical order in respect of all the five claims. Aggrieved by the said orders, the petitioners preferred an appeal

before the Appellate Collector of Customs. The Appellate Collector of Customs, by orders in C.3/570-78 dated 14-12-1978; C.3/569/78 dated

14-12-1978; C.3/2704/77 dated 3-3-1978; C.3/757/78 dated 14-12-1978 and C.3/611/78 dated 14-12-1978 rejected the appeals observing

as follows :-

It is seen from the drawing and other documents produced that the adjusting pin through semi-finished had the essential character of the finished

article. These goods are correctly classifiable under heading 84.10(3) C.T.A. as per interpretative Rule 2(a) of C.T.A. The original assessment

under Heading 84.10(3) C.T.A. 75 is in order. The appeal for reassessment under Heading 73.30/40 C.T.A. 75 read with Notification 254/76 is

accordingly rejected.

2. Aggrieved by the said orders, the petitioners preferred revision applications before the Central Government and the Central Government by the

impugned orders in 373, 452, 453/79, 880/78, 454/79 and 440/79 CUS II, rejected the revision applications. While rejecting the above revision

petitions, the Central Government (revisional authority) observed that inasmuch as the goods in question were no longer in the custody of the

customs authorities, it was not possible to examine them physically and ascertain the exact position in which they were imported and hence

proceeded to consider the state of the goods at the time of the import on the basis of the available invoices, bills of entry and other connected

import documents and the petitioner's pleadings. The revisional authority also observed that invoices in respect of the goods, described the goods

as adjusting pins and the invoices had shown these goods to be falling in the category of semi-finished components for Henry Medows Governors

and that the original bills of entry showed that the goods were subjected to

physical examination before the assessment and were found to be semi-finished adjusting pins and also observed that the goods imported as "camplates" are shown in the category of semi-finished components for distributor pumps. It was observed that the relevant duplicate bill of entry showed that the goods were subjected to physical examination before their release and were found to be camplates (semi-finished) and that the examination report also showed that the goods were found to be semi-finished as per declaration. However, the Revisional Authority following Rule 2(a) of the Rules for Interpretation of the First Schedule to the Customs Tariff Act, 1975, observed that since the goods had the essential character of unfinished goods, they were identifiable as adjusting pins/camplates and also observed that it is not in dispute that the goods imported were designed and destined to be finished adjusting pins and camplates. In view of the foregoing reasons the Revisional Authority came to the conclusion that the goods imported by the petitioners were rightly treated as adjusting pins/camplates and that the goods would necessarily fall under Heading 84.10(3) as part of goods specified therein in view of Note 2 to Section XVI of the First Schedule to the Customs Tariff Act, 1975. In these circumstances, the Petitioners have filed the above writ petitions for issue of a writ of certiorarified mandamus to quash the aforesaid orders of the authorities and to direct the respondents to refund all the sums of money claimed by them by their claim applications.

3. Learned counsel appearing on behalf of the petitioners contended that the petitioners imported semi-finished crude steel forgings of camplates for distributor pumps and crude steel forgings of adjusting pins for the use in governor assembly and that the crude materials have no direct use in any assembly in their imported state and condition and have, therefore, necessarily to be subjected to major processes like turning, grinding, broaching, groove cutting, heat treatment, surface treatment, lapping, drilling of holes to specifications and polishing etc. to suit the precise intended specifications and these processes would involve handling of the imported material in their crude form with delicateness through the sophisticated precision tools and machinery to obtain the required articles in their finished and complete state and, therefore, the goods imported do not have any special or essential characteristics of complete and finished article and cannot be

used as they existed in the imported state and hence the goods could not be classified as falling under Heading 84.10(3).

4. It is the case of the petitioners that the goods imported were crude steel forgings and do not have any special or essential characteristics of a complete and finished product. It was also submitted that the imported materials cannot as such be used as component or parts of fuel injection pump or of any pump in the state in which they had been imported. It was further stated that the essential character of an article under the prescribed interpretative rules postulated the possibility of its use in the condition in which it was imported, without being subjected to any further process except perhaps for some minor adjustments. In the instant case, the goods imported are in the nature of crude incomplete material and they cannot but be recognised and identified as only "other steel and iron articles not elsewhere specified", attracting the Heading 73.33/40. It was also contended that though exemption for iron or steel castings and forgings in excess of 60% as per Notification No. 254/CUS/76 dated 2-8-1987 was given, the exemption was sought to be denied on the ground that the goods were classifiable as parts of pumps under Heading 84.10(3).

It was also contended that it was not the case where the imported materials could possibly be used in that imported condition as a part of component in any machinery. It was also contended that interpretation as per Rule 2(a) of Rules of Interpretation cannot be applied in order to cover the goods imported by the petitioners on the basis that the goods have the characteristic of finished product.

5. In reply, Mr. P. Narasimhan, learned Senior Central Government Standing Counsel, contended that the goods imported were not just crude steel forgings as claimed by the petitioner, but semi-finished components which had undergone some layer of finishing. The drawings and other documents produced showed that the adjusting pin though semi-finished had the essential character of the finished article and hence they were correctly classifiable under the Heading 84.10(3) C.T.A. as per Interpretation Rule 2(a) of Customs Tariff Act, 1975. It was also contended that Rule 2(a) of the Rules of Interpretation is so wider that even an incomplete or unfinished articles have to be classified as a complete or finished article. It was further contended that the relevant part numbers were given in

the invoices covering the goods would show that the goods were made according to certain given dimensions and drawing of finished components and that the goods were identifiable as such.

6. Considering the aforesaid rival contentions of the parties in these writ petitions, it must be stated that it is not in dispute that the petitioners have imported semifinished products, camplates and adjusting pins. It is also (not) in dispute that the petitioners have not imported the finished products.

The question that has to be considered is whether the goods imported, which are the subject matter of these writ petitions, were to be considered

as semi-finished product under the Heading 73.33(40) read with Notification 254/CUS/76 dated 2-8-1987 or under the Heading 84.10(3)

C.T.A. It is the specific case of the petitioners that the goods in question were imported in crude steel forgings and that adjusting pins be used in

governor assembly and that camplates be used for distributor pumps and these crude materials have no direct use in any assembly in their imported

state and condition and have, therefore, necessarily to be subjected to major processes specified hereinabove. So far as this contention is

concerned, the respondents have not disputed and cannot dispute the same. However, Rule 2(a) of the Rules of Interpretation, provides that any

reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that as imported, the

incomplete or unfinished article has the essential character of the complete or finished article. In this context, it is relevant to consider the

observation of the revisional authority to the effect that on verification of invoices that the goods were to be considered to be falling in the category

of semi-finished components for Henry Medows Governors and that the relevant original bill of entry shows that the goods were subjected to

physical examination before assessment and were found to be semi-finished adjusting pins and likewise the camplates were found to be semi-

finished components for distributor pumps. The revisional authority further observed that the relevant duplicate bill of entry showed that the goods

were subjected to physical examination before their release and were found to be semi-finished. It was also observed that the aforesaid invoices

could be taken as representative of the two categories of goods involved in the subject matter of the revision petitions.

7. Tariff Item under Chapter No. 73.33(40) is as follows :-

Other articles of iron or steel

(1) not elsewhere specified

(2) of stainless steel.

Tariff item under Heading 84.10(3) is as follows :-

84.10 pumps (including motor pumps and turbo pumps) for liquids whether or not fitted with measuring devices; liquid elevators of bucket chain,

screws, band and similar kinds :-

(3) fuel, oil or water pumps for internal "combustion piston engines (including fuel injection pumps)".

8. It may also be considered that the respondents have not disputed about the averments that the imported material cannot as such be used as

components or parts of fuel injection pump or of any pump in the state in which they have been imported. It is not the case of the respondents that

where the imported materials could be possibly be used in that imported condition as a part of component in any machinery. From this, it may be

considered that the goods imported are semi-finished goods. The only aspect that has to be considered is, whether as a result of the observation of

the authorities below, the goods imported have the characteristic of the finished product and would fall under Item 84.10(3) C.T.A. by application

of Rule 2(a) of the Rules of Interpretation. If the rules of interpretation as such are to be construed that would cover incomplete and unfinished

products, provided the incomplete and unfinished article has the essential character of the complete or finished article. The essential characters of

the complete and finished article have not been defined. There is no guideline on which the imported goods can be considered as to whether the

goods imported have the essential character of a complete and unfinished article. In the instant case, the revisional authority had observed that the

goods were already cleared by the petitioners and that the revisional authority had not accepted the sample article produced for the purpose of

consideration as to whether the goods imported had the essential character of the complete and finished article. It is also not in dispute that the

goods imported as such cannot be used, unless such process, as pointed out by the learned counsel for the petitioners is completed. In the absence

of any guideline for consideration as to whether the imported goods has essential character of complete or finished articles, no definite yardstick

can be applied nor even the Dictionary Meaning be applied in this behalf.

9. Yet another fact may also be considered for the purpose of construing as to whether such imported articles have essential character of complete

and finished products is as to whether the articles imported are capable of being used as such without the said articles being subjected to any

further process, except for some minor adjustment and whether such articles can be construed as falling within the scope of Rule 2(a) of the Rules

of Interpretation. If the goods imported are subjected to major processes like turning, grinding, broaching, groove cutting, heat treatment, surface

treatment etc., as pointed out by the learned counsel for the petitioners, such imported goods cannot be construed as having the essential character

of complete and finished articles and cannot fall within the scope of Rule 2(a) of the Rules.

10. Rule 2(a) referred to hereinabove can have application to semi-finished goods, which are capable of being used as such with minor adjustment

and it cannot have any application with reference to semi-finished goods, which involved major processes for making the goods fit for use. In this

case it is seen that the goods imported are semi-finished goods and that the petitioner had stated that the goods involve further process as indicated

in the affidavit filed in support of the writ petitions and it is not the case of the respondents that the goods imported, which are the subject matter of

the writ petitions, do not require such a major process to make the goods imported fit for use as finished adjusting pins/camplates. Simply because

the goods imported are designed as such that does not mean that the goods imported for the purpose of assessment fall under the Heading

84.10(3) and that the goods have the essential character of complete and finished product. Unless and until the goods in question are capable of

being used after minor adjustment, without involving major process before the goods are being put into use, the conclusion as arrived at by the

authorities to the effect that the goods fall under the category of 84.10(3) of CTA is not sustainable in law.

11. In view of the reasons set out supra, the findings arrived at by the authorities below cannot be sustained in law and consequently the impugned

orders are liable to be quashed and accordingly they are quashed with a direction that the original authority may entertain and dispose of the

application as if the goods are falling under the Heading 73.33(40). These writ petitions are ordered accordingly. No costs.