
(2007) 04 SC CK 0123

In the Supreme Court Of India

Case No : Civil Appeal No. 5345 of 2001

Pragati Silicons Pvt. Ltd.

APPELLANT

Vs

Commissioner of Central Excise, Delhi

RESPONDENT

Date of Decision : 26-04-2007

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35E, 35L

Citation : (2007) 117 ECC 403 : (2007) ECR 403 : (2007) 211 ELT 534 : (2007) 6 SCALE 267 : (2007) 9 SCC 470 : (2007) 5 SCR 654 : (2007) 8 VST 705

Hon'ble Judges : Dalveer Bhandari, J;Ashok Bhan, J

Bench : Division Bench

Advocate : B.L. Narasimhan, Alok Yadav and M.P. Devanath, for the Appellant; K. Radhakrishnan B. Sunita Rao, Shanti Bhushan Chaubey and B. Krishna Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhan, J.—The assessee-appellant (hereinafter referred to as "the appellant"), being aggrieved by the Final Order No.239/2001-B dated 17-04-2001 passed by the Custom, Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal") in Appeal No.E/3322/2000- B, has filed the present appeal u/s 35L(b) of the Central Excise Act, 1944 (hereinafter referred to as "the Act"). The Tribunal by the impugned order has rejected the appeal filed by the appellant seeking the classification of "plastic name plates" under Chapter 87 as 'parts and accessories' of motor vehicles and instead classified it as 'other plastic products' under Chapter 39.

FACTS

2. The appellant is a small-scale unit, manufacturing plastic name plates for motor vehicles in accordance with the specifications and designs supplied by the customers, who are the vehicle manufacturers. The entire production of the appellant is sold to the vehicle manufacturers alone.

3. Between 1986 and 1994, the classification lists filed by the appellant claimed the classification of name plates under headings 87.08 and 87.14 and the same were approved by the Department from time to time. On 02-08-1994, a show cause notice was issued by the Assistant Collector of Central Excise, Ambala proposing to re-classify the name plates under heading 39.26 as articles of plastics. The notice was however subsequently dropped and an order-in- original dated 08-11-1994 was passed stating that the appropriate classification of the name plates was under Chapter 87.

4. Subsequently, the Commissioner of Central Excise, New Delhi exercising powers u/s 35E of the Act reviewed the above order and filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) by the order dated 31-10-2000 allowed the appeal of the Revenue and classified the plastic name plates under heading 39.26. Aggrieved by the order of the Commissioner (Appeals), the appellant filed an appeal before the Tribunal, which was rejected by the impugned order.

5. The Tribunal rejected the appeal of the appellant primarily by recording the following findings:

a. It held that "a motor vehicle is a complete vehicle without affixation of emblems or name plates" and that "it cannot be treated as a part without which the motor vehicle is not complete";

b. It distinguished the case of Collector of Central Excise, Calcutta Vs. Jay Engineering Works Ltd., Calcutta, stating that it examined name plates as inputs and not as parts of the fan;

c. The fact that a name plate can be used only in respect of the product whose name it carries does not make it a part of the motor vehicle;

d. That Heading 39.26 specifically covered articles of plastics and since it was not in dispute that the impugned goods were made of plastics, they were classifiable only under heading 39.26.

6. Thus, the essential question for consideration is: Whether these 'plastic name plates' are to be classified under headings 87.08 and 87.14 as 'parts and accessories' of motor vehicles or under heading 39.26 as other articles of plastics?

7. Before adverting to the submissions made by the opposing Counsels for the parties in respect of the above question, it is worthwhile to mention the competing headings relevant to the present discussion.

COMPETING HEADINGS:

8. The relevant portions of heading 87.08 and 87.14 are reproduced below for reference:

87.08 Parts and accessories of the motor vehicles of heading Nos.87.01 to 87.05

87.14 Parts and accessories of vehicles of heading Nos.87.11 to 87.13

9. The relevant portions of heading 39.26 are reproduced below for reference:

39.26 Other articles of plastics

ISSUES FOR DETERMINATION

10. Having laid out the facts and the relevant headings in the present matter, we can now proceed to the legal issues that we are required to decide upon. Based on the arguments of the Counsels for the parties, the following issues arise for determination:

- a. Whether 'plastic name plates' are classifiable under headings 87.08 and 87.14 by falling within the scope of term 'parts and accessories' of motor vehicles;
- b. Alternatively, even if they do fall within the scope of 'parts and accessories' of motor vehicles, whether there is any provision in the Explanatory Notes that specifically excludes 'plastic name plates' from headings 87.08 and 87.14?

ISSUE NO.1

11. The first issue that we are required to examine is whether 'plastic name plates' can be considered 'parts and accessories' of motor vehicles.

12. The Tribunal has answered the above question in the negative. Significantly, the Tribunal has only examined whether the name plates can be considered 'parts' of motor vehicles. It has not at all considered whether these name plates can be considered 'accessories' of motor vehicles. The relevant portion of the judgment of the Tribunal is reproduced below:

According to Sarkar's 'Words and Phrases of Excise & Customs', Second Edition, part is "an element of a sub-assembly, not normally useful by itself and not amenable to further disassembly for maintenance purpose". In common parlance parts are used in the manufacture of the final product and without which the final product cannot be conceived of. A motor vehicle is a complete vehicle without affixation of emblems or name plates and we agree with the submissions of the learned DR that it cannot be treated as a part without which the motor vehicle is not complete.... A name plate can certainly be used only in respect of the product whose name it carries but it does not make it a part of the motor vehicle on this ground. Heading 39.26 specifically covers articles of plastics and as it is not in dispute that the impugned goods have been made of plastics they would be classifiable under heading 39.26 only.

[Emphasis supplied]

13. The submissions made by Mr. Radhakrishnan, Counsel for the Revenue echo the position taken by the Tribunal above.

14. Counsel for the appellant however submits that the test to determine whether the name plates are 'parts and accessories' of the test according to

Note 3 to Section XVII of the Explanatory Notes in the Harmonized Commodity Description and Coding System [hereinafter referred to as "Explanatory Notes"], is the 'sole and exclusive' use. Counsel for the appellant submits that the name plates are solely and exclusively used for motor vehicles, since all the name plates are sold to manufacturers of vehicles and nothing enters the spare parts market for use elsewhere. He further submits that the name plates are permanently affixed to the vehicle from the assembly line itself. He also drew our attention to two circulars of the Department [Chandigarh Collectorate Trade Notice No.94-CE/90 dated 30-0-1990 and Calcutta II Collectorate Trade Notice No.10/87 dated 19-02- 1987] where 'plastic boxes' and 'helmet-locking devices', items which are according to him less necessary, are directed to be considered 'parts and accessories' of motor vehicles. Finally, he submits that the headings under Chapter 87 should gain primacy as they are more specific while the heading under Chapter 39 is residuary and more general in nature. Thus, Counsel for the appellant has challenged the decision of the Tribunal.

15. In the light of the rival submissions made by the counsel for the parties before us, we are required to determine whether the Tribunal has correctly held that 'plastic name plates' do not fall within the purview of headings 87.08 and 87.14. As far as these two headings are concerned, it is possible to include two kinds of goods therein - those which are either 'parts' of motor vehicles or those which are 'accessories' of motor vehicles. While a case can be made for the inclusion of name plates in Chapter 87 as 'parts' as well as 'accessories' of motor vehicles, we are not examining the former category. Without going into the question of whether name plates fall within the definition of 'parts' of motor vehicles, for the present purpose, we are restricting ourselves only to the interpretation of the broader term, 'accessories'. Thus, regardless of whether name plates can be considered 'parts' of motor vehicles, we are determining whether at the very least, name plates can be considered 'accessories' of motor vehicles.

16. The term 'accessory' is defined in The New Collins Concise Dictionary of the English Language (1982) as "a supplementary part or object, as of a car, appliance, etc". Other definitions for the accessory are found in the Advanced Law Lexicon (3rd edition, 2005) and include the following:

Something of secondary or subordinate importance;

...

Something contributing in subordinate degree to a general result or effect; an adjunct or accompaniment;

...

Accessory is an article or device that adds to convenience or effectiveness of, but is not essential to, main machinery.

17. This Court has considered and decided as to what the meaning of the term

`accessory' is in a few earlier cases. In *Annapurna Carbon Industries Co. Vs. State of Andhra Pradesh*, , the Court was required to examine whether "arc carbon" was an 'accessory' to cinema projectors or other cinematographic equipment under item 4 of Ist Schedule to Andhra Pradesh General Sales Tax Act, 1957. Answering in the affirmative, the Court opined that:

We find that the term "accessories" is used in the schedule to describe goods which may have been manufactured for use as an aid or addition. A sense in which the words accessory is used given in Webster's Third New International Dictionary as follows:

An object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of some-thing else.

Other meanings given there are: "supplementary or secondary to something of greater or primary importance": "additional": "any of several mechanical devices that assist in operating or controlling the tone resources of an organ". "Accessories" are not necessarily confined to particular machines for which they may serve as aids. The same item may be an accessory or more than one kind of instrument. (Para10)

It will be noticed that the entry we have to interpret includes "parts" as well as "accessories" which are required for use in projectors or other cinematographic equipment. We think that the Andhra Pradesh High Court correctly held that the main use of the arc carbons Under consideration was duly proved to be that of production of powerful light used in projectors in cinemas. The fact that they can also be used for search lights, signalling, stage lighting, or where powerful lighting for photography or other purposes may be required, could not detract from the classification to which the carbon arcs belong. That is determined by their ordinary or commonly known purpose or user. This, as already observed by us, is evident from the fact that they are known as cinema arc carbons" in the market. This finding was enough, in our opinion, to justify the view taken by the Andhra Pradesh High Court that the goods under consideration are covered by the relevant entry No. 4. (Para11)

[Emphasis supplied]

18. The above decision was relied upon in the case of *M/s. Mehra Bros Vs. The Joint Commercial Officer, Madras*, . The primary issue before the Court in this case was whether `car seat covers' could be considered `articles adapted to use generally as parts and accessories of motor vehicles'. The Court, holding that car seat covers and upholstery were in fact accessories to motor vehicles, observed as follows:

In Black's Law Dictionary, Fifth Edition at p. 13 'accessory' has been defined as "anything which is joined to another thing as an ornament, or to render it more perfect, or which accompanies it, or is connected with it as an incident, or as subordinate to it, or which belongs to or with it, adjunct or accompaniment, a

thing of subordinate importance. Aiding or contributing in secondary way of assisting in or contributing to as a subordinate". (Para 3)

...

In our view the correct test would be whether the article or articles in question would be an adjunct or an accompaniment or an addition for the convenient use of another part of the vehicle or adds to the beauty, elegance or comfort for the use of the motor vehicle or a supplementary or secondary to the main or primary importance. Whether an article or part is an accessory cannot be decided with reference to its necessity to its effective use of the vehicle as a whole. General adaptability may be relevant but may not by itself be conclusive. Take for instance Stereo or Air-conditioner designed and manufactured for fitment in a motor car. It would not be absolutely necessary or generally adapted. But when they are fitted to the vehicle, undoubtedly it would add comfort or enjoyment in the use of the vehicle. Another test may be whether a particular article or articles or parts, can be said to be available for sale in an automobile market or shops or places of manufacture; if the dealer says it is to be available certainly such an article or part would be manufactured or kept for sale only as an accessory for the use in the motor vehicle. Of course, this may not also be a conclusive test but it is given only by way of illustration. Undoubtedly some of the parts like axle, steering, tyres, battery etc. are absolutely necessary accessories for the effective use of the motor vehicle. If the test that each accessory must add to the convenience or effectiveness of the use of the car as a whole is given acceptance many a part in the motor car by this process would fall outside the ambit of accessories to the motor car. That would not appear to be the intention of the legislature.... (Para 5)

[Emphasis supplied]

19. The view taken regarding the term 'accessory' in the above two cases has been reiterated in the cases of Union Carbide India Ltd. Vs. State of A.P., and Commissioner of Central Excise, Delhi Vs. Allied Air-Conditioning Corporation (Regd.), .

20. The Court was also faced with similar circumstances in the case of Jay Engineering (supra). In this case, the Respondent was the manufacturer of electric fans, and brought into its factory name plates under tariff item 68 of the erstwhile Central Excise Tariff. The name plates were affixed to the fans before marketing them. Here, the Court emphasized on the necessity of name plates for the marketing of the product. The Court observed:

In those circumstances, in our opinion, the Tribunal was right in arriving at the conclusion that the name plate was not a piece of decoration. Without the name plate, the electric fans as such, could not be marketed; and that the dealer was entitled to the benefit of the notification No. 201/79-CE for the purpose of obtaining pro forma credit. Fans with name plates, have certain value which the fans without the name plates, did not have. If that be so, then the value added

for the accretion of name plate was entitled to pro forma credit in terms of the said notification. It is true that an electric fan may perform its essential functions without affixation of the name plate, but that is not enough. Electric fans do not become marketable products without affixation of name plates. (Para 9)

[Emphasis supplied]

21. It is evident therefore, that an 'accessory' by its very definition is something supplementary or subordinate in nature and need not be essential for the actual functioning of the product. Applying the test laid down in Mehra Bros. case (supra), it cannot be denied that name plates add to the convenient use of the motor vehicle. Name plates serve a very useful purpose inasmuch as it gives an identity to the vehicle. Each vehicle comes with different brand name and in different models having distinct features. The manufacturers of different type of models of vehicles market them under a name and the vehicles are recognized and referred to by the name plate affixed on them. Name plates convey to the consumers the distinct features it carries. Undoubtedly they add effectiveness and value to the vehicle and are at the very least accessories of the vehicle. Thus, even if there was any difficulty in the inclusion of the plastic name plates as 'parts' of the motor vehicles, they would most certainly have been covered by the broader term 'accessory'. In this view of the matter, we are of the opinion that the Tribunal has erroneously come to the conclusion that 'plastic name plates' are not 'parts and accessories' of motor vehicles for the purposes of headings 87.08 and 87.14.

ISSUE NO.2

22. The second issue before consideration is whether, despite the inclusion of the plastic name plates within the scope of the 'parts and accessories', certain other provisions operate to remove or exclude plastic name plates from Chapter 87.

23. This point was neither raised before nor decided by the Tribunal although this point had been argued before the authority in original as well as the Commissioner of appeals. Both of them decided this point against the appellant. Option with us is either to remit the case to the Tribunal for a decision on this point or decide the same ourselves as this point had been decided by the authorities below. After hearing the Learned Counsel for the parties and after applying our mind on this point we have formed the opinion that to avoid the unnecessary delay and expense to the parties it would be appropriate for us to decide the point ourselves.

24. In this regard, it has been submitted by Counsel for the Revenue that the Explanatory Notes in the Harmonized Commodity Description and Coding System [hereinafter referred to as "HSN"] to Section XVII (which includes Chapter 87) make it clear that plastic name plates are excluded from the scope of Chapter 87 and are therefore required to be classified under the residuary provision in Chapter 39.

25. Since the submission of the Revenue is based purely on the HSN Explanatory Notes, it is essential to reproduce the relevant parts of the HSN Explanatory Notes. The notes below relevant headings, heading 87.08 and 87.14, state as follows:

This heading covers parts and accessories of the motor vehicles of headings 87.01 to 87.05, provided the parts and accessories fulfil both the following conditions:

- (i) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles; and
- (ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note).

[Emphasis supplied]

An almost identical explanation exists under the Notes to heading 87.14.

26. The effect of the above HSN Explanatory Notes is to specifically exclude from the scope of these headings what is excluded in the general notes to the entire Section (Section XVII), of which Chapter 87 is a part. The General Explanatory Note to Section XVII states as follows:

Section Notes.

2. - The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this section:

...

(b) Parts of general use, as defined in Note 2 to Section XV, of base metal (section XV), or similar goods of plastics (Chapter 39)

3.- References in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.

[Emphasis supplied]

Further explanation regarding Note 2 reads as follows:

(A) Parts and accessories excluded by Note 2 to Section XVII

...

(2) Parts of general use as defined in Note 2 to Section XV, for example, number plates, nationality plates, etc. (such goods of base metals fall in Chapter 83, and similar goods of plastics fall in Chapter 39).

27. Referring to Note 2 of Chapter XV,
Section Notes.

...

2.- Throughout the Nomenclature, the expression "parts of general use" means:

...

(c) Articles of headings...83.10....

Finally, Heading 83.10 is entitled "SIGN PLATES, NAME PLATES, ADDRESS PLATES AND SIMILAR PLATES...., OF BASE METAL..." and includes various kinds of name plates in further sub-headings.

28. Based on the submissions made by Counsel for the Revenue, the central question before us is: whether the abovementioned Section Note 2(b) excludes plastic name plates from the scope of Section XVII? Thus, we are required to looking into the meaning and interpretation of Section Note 2(b). The Counsel for the Revenue contends that since Note 2 to Section XV defines "parts of general use" as including name plates, sign plates, number plates, etc., their plastic equivalents [by virtue of Note 2(b)] will also get excluded from the scope of Chapter 87. Thus, he submits that they ought to be classified under Chapter 39.

29. We however find it difficult to accept this submission in the light of the language used in Note 2(b). Note 2(b) excludes from the scope of Section XVII "Parts of general use, as defined in Note 2 to Section XV, of base metal (section XV), or similar goods of plastics (Chapter 39)". What we have to examine is the scope of the last part of the Note. Admittedly, there are two ways of interpreting this phrase. The interpretation suggested by the Revenue is to read the exclusion of "similar goods of plastics", in synchrony with the exclusion that applies to the goods of base metal. In this respect, he drew our attention to the further explanation that is provided on Note 2(b), where number plates are given as an example and it is further provided that "such goods of base metals fall in Chapter 83, and similar goods of plastics fall in Chapter 39". According to the Revenue, this makes it amply clear that the "parts of general use" includes name plates of both, base metal and plastic and therefore fall out of the scope of Section XVII.

30. We are not impressed with this submission. It is true that on first blush, it appears that if the base metal name plates are excluded, so must similar plastic goods be excluded. However, we do not think that this is the correct position, primarily because of the reference made in Note 2(b) to Chapter 39. Undoubtedly, name plates of base metal stand excluded from the scope of Section XVII by virtue of being "parts of general use" as defined and specifically mentioned in Chapter XV. Now, with respect to plastic name plates, if the reference to Chapter 39 had not been made, then there would be no controversy at all. In such a case, all plastic products similar to those defined in Chapter XV would be excluded, regardless of an omission to specifically mention them within

Chapter 39. In other words, without any reference to Chapter 39 in Note 2(b), the only control on the meaning of "similar goods of plastics" would be the description of goods included within Chapter XV.

31. However, the minute a reference is made to Chapter 39, it is the provisions in Chapter 39 that control the scope of "similar goods of plastics". Thus, when Note 2(b) refers to similar goods of plastics as in Chapter 39, it must be interpreted to mean similarly defined goods in Chapter 39. And since no definition or reference exists in Chapter 39 regarding name plates, etc., we cannot find any exclusion with respect to these goods from Chapter 87. For example, when the exclusion regarding base metal name plates is made, it is so because there exist specific and detailed headings in that Chapter. But in the absence of such specific headings in Chapter 39, we are unable to accept the exclusion of the plastic name plates from Chapter 87 and include it within a residuary provision in Chapter 39.

32. Thus, we are of the opinion that the language in Note 2(b) cannot be interpreted to exclude plastic name plates from the scope of Section XVII.

CONCLUSION

33. In conclusion, since plastic name plates are 'parts and accessories' of motor vehicles and since they are not excluded from the Section XVII, the appropriate classification is under headings 87.08 and 87.14.

34. For the reasons stated above, the appeal is allowed. There shall be no order as to costs.