
(2015) 05 SC CK 0092

In the Supreme Court Of India

Case No : Civil Appeal No. 7526 of 2004

Secure Meters Ltd.

APPELLANT

Vs

Commissioner of Customs

RESPONDENT

Date of Decision : 05-05-2015

Acts Referred:

Central Excise Tariff Act, 1985 — Section 2

Citation : (2015) 7 AD (SC) 376 : (2015) 319 ELT 565 : (2015) 32 GSTR 379 :
(2015) 6 SCALE 48 : (2015) 7 SCJ 35

Hon'ble Judges : A.K. Sikri, J; Rohinton Fali Nariman, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Arjan Kumar Sikri, J.—The Appellant is engaged in the manufacture of electricity meters. In September 2000, the Appellant imported a consignment consisting of LCD Modules (Printed Circuit Boards) and Liquid Crystal Display (LCD) from Hong Kong. The classification of the LCD Module is not in dispute. The dispute in the instant case relates to classification of LCDs. The Appellant sought clearance of LCDs under Chapter Heading 9013.80 and claimed assessment at Nil rate (basic duty), 16% additional duty and 4% SAD. As per the Appellant, since the LCDs were classifiable under Chapter Heading 9013.80, in view of Notification No. 16/2000, and particularly Entry/S. No. 304 of the table of the said Notification, the goods classified under Heading 9013.80 attracted Nil rate of basic custom duty. That was the reason for claiming assessment at Nil rate insofar as basic duty is concerned. However, the case of the Respondent/custom authorities is that on verification it was found that the goods were not simple liquid crystal. On the contrary, these were LCD Modules and Elastomeric LCD Displays and were part of Energy Meter. The relevant invoices also described the goods as "electronic part for energy meter". The drawing and literature which were provided did not specify the purpose.

2. The Deputy Commissioner, Customs (Adjudicating Authority), thus, passed

orders dated 31.08.2001 holding that LCDs were classifiable under Chapter Heading 9028.90 and not under 9013.80 as claimed by the Appellant. For classifying the goods under the aforesaid category, recourse to Rule 3(c) of the General Rules for the Interpretation of the First Schedule-Import Tariff was taken by the Adjudicating Authority. The Deputy Commissioner observed that even if he considered the goods to be devices, then only those LCD devices/displays which do not constitute articles provided for more specifically in other heading would cover in Chapter Heading 9013 and, accordingly, he took the view that the goods are specific part of the electricity meter and, thus, classified the same under Chapter Heading 9028.90 as parts of electricity meter.

3. The aforesaid order of the Adjudicating Authority has been affirmed by the Commissioner as well as CESTAT resulting into dismissal of appeals filed by the Appellant herein. The decision of CESTAT reveals that Appellant relied upon its earlier decision in the case of CCE, Bombay v. Universal Information Commn. Equipment Ltd. 1997 (94) ELT 543 However, the Tribunal has held that the aforesaid decision is not applicable to the facts of the present case. The Tribunal has accepted the contention of the Revenue that the invoices issued by the supplier of the goods specifically mentioned that these were parts of electronic energy meters and even the Appellant had admitted that these goods had to be issued as parts of energy meter.

4. Since the Appellant claims that the LCDs fall under Chapter Heading 9013.80 and the argument of the Revenue is that these are rightly classified under Heading 9028.90, we may first take note of these Chapter Headings:

5. One thing is clear. Both the tariff items under which classification is sought by the Appellant as well as the authorities, fall under Chapter 90. Therefore, it would be advisable to refer to the relevant provisions of Note 2 to Chapter 90 as these notes are inserted to guide how the goods are to be classified under this Chapter. Heading of Chapter 90 is as follows:

Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof

6. Note 1 of this Chapter stipulates certain items which are not covered under this Chapter. Obviously, this Note does not concern us in the present appeal. Note 2, which is material for the purposes of this appeal, is reproduced below:

2. Subject to Note 1 above, parts and accessories for machines, apparatus, instruments or articles of this Chapter are to be classified according to the following rules:

(a) Parts and accessories which are goods included in any of the headings of this Chapter or of Chapter 84, 85 or 91 (other than heading No. 84, 85, 85.48 or 90.33) are in all cases to be classified in their respective headings;

(b) other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of

machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading No. 90.10, 90.13 or 90.31) are to be classified with the machines, instruments or apparatus of that kind;

(c) all other parts and accessories are to be classified in heading No. 90.33.

7. It is not in dispute that the goods in question which are imported by the Appellant are LCDs. It is also not in dispute that these devices are used in electricity supply meters. Since the LCDs are used for electronic supply meters by the Appellant, the Revenue has taken the view that it would fall in tariff item No. 9028.90 as that entry specifically includes, amongst others, electricity supply meters. As LCDs are used as part of the electricity supply meters, they are held to be covered under sub-heading 9028.90 by the Revenue. It may be emphasised that in coming to this conclusion, the authorities below have been influenced by the fact that the goods imported are actually used as parts of electronic energy meters and the Appellant has even admitted the same.

8. Challenging the aforesaid view of the authorities, submission of Mr. Lakshmikumaran, learned Counsel appearing for the Appellant, is that when the specific description of the goods in question, namely, LCDs, is distinctly covered by another tariff item which is 9013, it has to be classified in that entry and the factum of its use as part or accessory in the electronic energy meters would be of no consequence and, therefore, it cannot be held to be covered by tariff item 9028.90. The submission, precisely, was that whenever a particular item of goods falls in a specific tariff item, it has to be classified under the said tariff item and not in other item where it can be used as part thereof.

9. Mr. Lakshmikumaran has also placed heavy reliance upon Note 2 attached to Chapter 90 and argued that as per Note 2(a), parts and accessories, which has goods included in any of the headings of said Chapter 90 (or of Chapter 84, 85 or 91), are to be classified in their respective headings.

10. Ms. Kiran Suri, learned senior Counsel appearing for the Respondent/department, argued, per contra, that in the present case goods were specifically meant for use as parts in electric meters, which is even accepted by the Appellant. Therefore, Note 2 would not apply in this case. She submitted that under these circumstances it is the General Rule of Interpretation that would apply and referred to Rule 3 of the said Rules and contended that if the goods are classifiable under two or more headings, on the application of Rule 2(b) of the General Rules of Interpretation, then the classification has to be in the manner stipulated in Rule 3 of the General Rules. Rules 2 and 3 are as under:

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 dis-assembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

3. When by application of Rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

11. She argued that as per Rule 3(a) of the Rules, it was incumbent to classify the goods in that heading which provides "the most specific description" in contrast with the heading providing for a more general description. She also referred to the following portion of the assessment order made by the Commissioner of Customs to buttress her aforesaid submission:

Even if we ignore the above definition of device and consider the imported parts i.e. Liquid Crystal Displays to be "devices", only those liquid crystal devices/displays which do not constitute article provided for more specifically in other headings will be covered in CTH 90.13. In other words, liquid crystal devices/displays which do not specifically form part of a specific type of equipment will be classified here. General purpose LCD, for example the one displaying only 0-9 numbers, which can be attached to several devices/equipments and cannot be specifically covered in any one heading as parts are to be classified here if they are considered as devices. Had the intention been to cover all Liquid Crystal Devices/displays in CTH 90.13 there was no need for the description -

Liquid Crystal Devices not constituting articles provided for more specifically in

other headings.

And "Liquid Crystal Device" would have been sufficient instead. The only way to make Liquid Crystal Device/display more specifically covered in other heading is to make it a part of a specific articles as in present case.

There can be an argument whether being part of a specific goods can make LCD more specifically covered in that heading as part of the specified equipment as compared to CTH 90.13, but there can be no doubt that such situation certainly makes it classifiable in other heading (e.g. CTH 9029.90 in present case). And when any good is classifiable in two or more headings, then as per Rule 3(c) of General Rules for Interpretation, the heading which occurs last in numeric order is to be preferred.

12. We have given due consideration to the aforesaid submissions made by learned Counsel for the parties.

13. We may point out at the outset that Rule 3 of the General Rules, which is sought to be invoked by the Department, would be seen and examined if the classification cannot be determined according to the terms of the headings and relevant Section and Chapter Notes thereof. It is clearly provided in Rule 1 of the General Rules itself, which reads as under:

Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

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It is manifest from the reading of this Rule that we will have to first undertake the exercise of finding out as to whether the goods in question can be classified, taking aid of the Chapter Notes on which reliance is placed. This position is made amplified in Commissioner of Central Excise, Nagpur Vs. Simplex Mills Co. Ltd., AIR 2005 SC 4061 : (2005) 99 ECC 161 : (2005) 181 ELT 345 : (2005) 3 JT 1 : (2005) 3 SCC 51 : (2005) 2 SCR 441 : (2005) 140 STC 125 , this Court held that the Rules for the Interpretation of the Schedule to the Central Excise Tariff Act, 1985 have been framed pursuant to the powers Under Section 2 of that Act. The relevant para is reproduced below:

11. The Rules for the Interpretation of the Schedule to the Central Excise Tariff Act, 1985 have been framed pursuant to the powers Under Section 2 of that Act. According to Rule 1 titles of sections and chapters in the Schedule are provided for ease of reference only. But for legal purposes, classification "shall be determined according to the terms of the headings and any relevant section or

chapter notes". If neither the heading nor the notes suffice to clarify the scope of a heading, then it must be construed according to the other following provisions contained in the Rules. Rule 1 gives primacy to the section and chapter notes along with terms of the headings. They should be first applied. If no clear picture emerges then only can one resort to the subsequent rules. The Appellants have relied upon Rule 3. Rule 3 must be understood only in the context of Sub-rule (b) of Rule 2 which says inter alia that the classification of goods consisting of more than one material or substance shall be according to the principles contained in Rule 3. Therefore when goods are prima facie, classifiable under two or more headings, classification shall be effected according to Sub-rules (a), (b) and (c) of Rule 3 and in that order. The Sub-rules are quoted:

3. (a) The heading which provides the most specific description shall be preferred to heading providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration.

Before we advert to this core issue, let us understand what constitutes LCDs and its functions, with adequate clarity.

14. In Bloomsbury Dictionary of "Science for Everyone", LCD and LED (light emitting diode) are described in the following manner:

LCD AND LED

The two principal methods of forming number and letters on instruments such as calculators and digital watches. A basic pattern of seven bars is used to form the digits 0 to 9 and several letters. To form other letters and symbols, more than seven bars are required.

In the LED (light-emitting diode), the bars are made of a substance that permits an electric current to flow through in one direction only. A substance used in this way is called a diode. As the current flows, the diode gives off red, blue, yellow, or other coloured light, depending on the compound of which it is made. For example, gallium phosphide (GaP) emits a green glow. Electric circuits in the instrument selectively turn on the current to the bars to form the various numbers and letters.

In the LCD (liquid crystal display), the bars are made of liquid crystals. These are a kind of hybrid material, not quite a liquid and not quite a solid. They can't be poured readily, as with liquids, nor are their molecules locked in place, as with true solids. But the molecules can be rotated slightly by an electric current. When no current flows, the bars are not noticeable, because they reflect light to the same extent as the rest of the display surface. But when a current flows through a bar, its molecules rotate and its ability to reflect light is reduced. That bar appears darker than the area around it and forms part of a number or letter.

You can produce a similar darkening effect, called polarization, with Polaroid sunglasses. Hold the glasses several centimeters from one eye and look through one lens at a shiny, sunlit surface. Rotate the lens and observe the darkening.

Liquid crystals can be made to order to do a particular job. For example, one kind of crystal is sensitive to slight temperature changes. It is used in thermometers where the number representing the temperature appears, then disappears, to be succeeded by a higher or lower number as the temperature changes.

The basic pattern of digits or letters which is formed in these LCDs is as follows:

As is clear from the above, in the LCD the bars are made of liquid crystals which are neither liquid nor solid entirely, but a hybrid material of the two. The molecules are rotated slightly by electric current making a particular bar darker than the area around it thereby forming part of a number or letter.

15. Keeping in mind the aforesaid nature of product in question, we revert to the tariff entries. It cannot be disputed that LCDs are specifically provided in tariff item 9013. The only condition is that such LCDs should not constitute "articles" provided more specifically in other headings. In the present case, it is also not in dispute that LCDs imported by the Appellant did not constitute any such "article" which is more specifically provided in other headings. On the contrary, the Revenue wants to include in the same Chapter, i.e. Chapter 90, though under Entry 9028.90.10 as "parts and accessories". The only reason for including the goods under Chapter Heading 9028 is that the LCDs were to be used in the electricity supply meters. However, Entry 9028 does not pertain to LCDs but gas, liquid, etc. and includes electricity supply meters as well. Merely because these LCDs are to be used as parts in the said electricity supply meters, can it be said that they are to be included in Entry 9028? Here, Note 2 of this Chapter Notes becomes important since LCDs are used in the electricity supply meters only as parts thereof.

Note 2(a) stipulates that parts and accessories which are goods included in the heading of the said Chapter, i.e. Chapter 90, are to be classified in their respective headings. Going by the plain reading of Note 2(a) it is clear that LCDs, which are goods and are used as parts in the final product mentioned in Chapter 90, namely, electricity supply meters, are to be classified in its respective heading. Respective heading, which is specifically provided, is 9013.

16. It was sought to be argued by Ms. Kiran Suri that as per Note 2(b), when these LCDs are used solely for particular instrument, namely, electricity supply meter, it has to be classified with the said meter and, therefore, Chapter Entry 9028 would get attracted. However, this argument loses sight of the fact that Note 2(b) relates to "other parts and accessories", namely, it would apply to those parts and accessories for which Note 2(a) is inapplicable. Once we find that in the present case Note 2(a) squarely applies, the irresistible conclusion is that the goods will be classified in tariff item 9013, which is the specific heading for these goods.

17. In *Collector of Central Excise v. Delton Cables Ltd. and Anr.* (2005) 12 SCC 284, this Court has held, while interpreting Notes 2(a) and 2(b) of Chapter Heading 85, which is virtually to the same effect, that Note 2(b) would apply only if the items in question were not specifically classifiable under their respective headings. Para 4 of the said judgment, to this effect, reads as under:

4. It is clear from a reading of the two clauses to the section note that Clause (b) would only apply once it was found that the items in question were not specifically classifiable under their respective headings. As has been clearly said by the Collector (Appeals)

from the sequence of the paragraphs given Under Section Note 2 it is clear that the question of switching over to Section Note 2(b) can arise only after ensuring that the parts are not covered by Section Note 2(b) [sic Section Note 2(a)] which begins with the expression "other parts" meaning thereby that the parts which are not covered by Section Note 2(a) would be considered for coverage by Section Note 2(b). One cannot therefore directly jump over to Section Note 2(b) without exhausting the possibility of Section Note 2(a).

18. The aforesaid view of ours gets strengthened from Part-III of Chapter Notes to Chapter 90. We may mention here that after studying the Chapter Notes, Note 2 whereof is reproduced above, there are certain guidelines provided under the caption "General". Part-I thereof deals with General Content and Arrangement of the Chapter; Part-II deals with Incomplete or Unfinished Machines, Apparatus, etc.; and Part-III deals with Parts and Accessories. We are reproducing here this portion in order to show how it supports the view which we have proposed to take as indicated above:

(III) PARTS AND ACCESSORIES

Subject to Chapter Note 1, parts or accessories identifiable as suitable for use solely or principally with the machines, appliances, instruments or apparatus of this Chapter are classified with those machines, appliances, etc.

This general rule does not, however, apply to:

(1) Parts or accessories which in themselves constitute articles falling in any particular heading of this Chapter or of Chapter 84, 85 or 91 (other than the residual heading 84, 85, 85.48 heading 84.14; transformers, electro-magnets,

capacitors, resistors, relays, lamps or valves, etc., remain classified in Chapter 85; the optical elements of heading 90.01 or 90.02 remain in the headings cited regardless of the instruments or apparatus to which they are to be fitted; a clock or watch movement is always classified in Chapter 91; a photographic camera falls in heading 90.06 even if it is of a kind designed for use with another instrument (microscope, stroboscope, etc.)

(2) Parts or accessories suitable for use with several categories of machines, appliances, instruments or apparatus falling in different headings of this Chapter are classified in heading 90.33, unless they are in themselves complete instruments, etc., specified in another heading (see paragraph (1) above).

19. This contains a general explanation to Chapter Note 2 and mentions that where parts or accessories identifiable as suitable for use solely or principally with the machines, appliances, etc., they are to be classified with those machines/appliances. However, what is important is that immediately thereafter it is clarified that this general rule would not apply in certain circumstances. Sub-para of the above takes things beyond the pale of any doubt by making it crystal clear that those parts and accessories which in themselves constitute "article" falling in any particular heading of this Chapter, the general rule will not apply and said article would fall in that particular heading. To demonstrate this, examples which are given, eminently fit into the case at hand.

20. The aforesaid view of ours gets further cemented on going through Explanatory Notes issued by the World Customs Organization. Volume 4 of the Second Edition (1996), which covers Chapters 85-97, contains explanatory note in respect of item mentioned at 90.13, with which we are directly concerned herein. Relevant portion thereof reads as under:

90.13-LIQUID CRYSTAL DEVICES NOT CONSTITUTING ARTICLES PROVIDED FOR MORE SPECIFICALLY IN OTHER HEADINGS: LASERS, OTHER THAN LASER DIODES; OTHER OPTICAL APPLIANCES AND INSTRUMENTS, NOT SPECIFIED OR INCLUDED ELSEWHERE IN THIS CHAPTER.

In accordance with Chapter Note 5, measuring or checking optical appliances, instruments and machines are excluded from this heading and fall in heading 90.31. Chapter Note 4, however, classifies certain refracting telescopes in this heading and not in heading 90.05. It should, moreover, be noted that optical instruments and appliances can fall not only in headings 90.01 to 90.12 but also in other headings of this Chapter (in particular, heading 90.15, 90.18 or 90.27). This heading includes:

(1) Liquid crystal devices consisting of a liquid crystal layer sandwiched between two sheets or plates of glass or plastics, whether or not fitted with electrical connections, presented in the piece or cut to special shapes and not constituting articles described more specifically in other headings of the Nomenclature.

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As per this, LCD would be covered by "other devices" mentioned in 9013.80. That is precisely the case of the Appellant.

21. The upshot of the aforesaid discussion leads to the conclusion that the view taken by the Tribunal in the impugned judgment is unsustainable in law. We, thus, allow the appeal, set aside the orders of the authorities below and hold that LCDs imported by the Appellant were classifiable under Chapter Heading 9013.80.