

Jain Engineering Co.

Vs.

Collector Of Customs, Bombay And Others

Civil Appeal No. 335 of 1987

(Ranganatha Misra, M. M. Dutt JJ)

18.09.1987

JUDGMENT

DUTT, J. -

1. The only question that is involved in this appeal preferred under Section 130-E of the Customs Act, 1962, is whether the appellant is entitled to the benefit of the Notification No. 281-Cus/76, granting part exemption from payment of customs duty in respect of the rod bushes and camshaft bushes imported by the appellant.

2. Before we refer to the said notification, we may notice the provisions of the heading No. 84.06 and heading No. 84.63 of the Customs Tariff Act, which are as follows :

#-----	Heading	Sub-heading	No.
and descrip-	Rate of duty	Central Excise	No.
(b) Preferent-	ial areas-----	tion of article	(a) Standard
Internal combustion	piston (a) 100 per cent	29 engines	84.63
cranks, (a) 60 per cent	bearing housings, plan	shaft bearings, gears	and gearing
(including friction	gears and gear-boxes	and other variable	speed gears),
pul- leys and pulley	blocks, clut- ches	and shaft couplings	(1) Not elsewhere
specified (a) 60 per cent	(2) Plan shaft bearings	with (a) 100 per cent	or without
bearing housing-----	-----	-----	##

3. The said Notification No. 281-Cus dated August 2, 1976, as amended from time to time, reads as follows :

Notifn. No. 281-Cus. - The articles specified in column (2) of the Table hereto annexed and falling under Heading No. 84.06 are exempt form so much of that portion of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975, as is in excess of the rate specified in the corresponding entry in column (3) of the said Table.

# THE TABLE-----	Description of
article Rate of duty-----	(2) (3)-----
-----	Stationary or industrial internal
combustion piston	40 per cent and parts thereof
excluding those which	are inter- ad
valorem changeable	for use with motor vehicle
other than those	specified against
Serial No. 2.	Internal combustion piston
engines for industrial	and 40 per cent

agricultural tractors and power tillers and parts ad valorem thereof excluding those which are interchangeable for use with other motor vehicles. Marine engines and parts thereof excluding those which 40 per cent are interchangeable for use with motor vehicles other ad valorem than those specified against Serial No. 2. Internal combustion piston engines designed for use in 3 per cent aeroplanes and parts of such engines. ad valorem Internal combustion piston engines for locomotives and 40 per cent parts thereof excluding those which are interchangeable ad valorem for use with motor vehicles other than those specified against Serial No. 2.-----  
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4. The Assistant Collector and the Collector of Customs (Judicial) overruled the contention of the appellant that the appellant was entitled to the benefit of exemption under the Notification No. 281-Cus/76. The Customs, Excise and Gold (Control) Appellate Tribunal, hereinafter referred to as 'the Appellate Tribunal', dismissed the appeal of the appellant and affirmed the orders of the customs authorities. According to the Appellate Tribunal, the bushings and the bearings are the same and as the bearings come under the Heading No. 84.63 and not under Heading No. 84.06, they are not entitled to the benefit of exemption under the said notification. Hence this appeal under Section 130-E of the Customs Act.

5. The notification grants exemption in part from payment of the customs duty in respect of articles specified in column (2) of the Table and falling under Heading No. 84.06. Heading No. 84.06 refers to 'internal combustion piston engines'. Paragraph 2 of column (2) of the Table annexed to the notification, which is relevant for our purpose, not only refers to internal combustion piston engines, but also to 'parts thereof'. Heading No. 84.06 does not, however, contain or refer to the parts of internal combustion piston engines.

6. It is submitted by the learned Additional Solicitor General that as Heading No. 84.06 does not refer to the parts of internal combustion piston engines, the appellant is not entitled to claim any exemption for the bushes, even if they are parts of such engines. Secondly, it is contended by him that even assuming that Heading No. 84.06 also contemplates parts of the engine, such parts must be all the parts of the engine and not a few parts thereof. In other words, his contention is that Heading No. 84.06 will apply when an internal combustion piston engine is imported in a knocked-down condition. Lastly, it is contended that bushes and bearings are the same and identical articles as held by the Appellate Tribunal and, as bearings have been provided for under Heading No. 84.63, the question of any exemption under the notification does not arise. It is also submitted by the learned Additional Solicitor General that even assuming that the bushes and bearings are not identical articles but they are distinct and separate, yet there is no material for holding that the bushes, which have been imported by the appellant, are parts of the engines referred to in Heading No. 84.06.

7. The notification provides that the articles specified in column (2) of the Table and falling under Heading No. 84.06 are exempt from payment of a certain portion of the customs duty. Paragraph 2 of column (2) of the Table not only mentions internal combustion piston engines, undoubtedly forming the only subject matter of Heading No. 84.06, but it also mentions the 'parts thereof'. That is to say, parts of such engines. Heading No. 84.06 does not refer to 'parts' of such engines. Non-mention of 'parts' in Heading No. 84.06 has given rise to a controversy between the parties. It may be that the notification has been inartistically drafted. It is, however, clear that the notification not only intends to grant exemption to internal combustion piston engines, but also to 'parts thereof'. When, therefore, the intention is clear and manifest, it will be unreasonable to take a narrow view of the notification and not to extend its benefit to the parts of the engines referred to in Heading No.

84.06. To accept the contention made on behalf of the respondents that as Heading No. 84.06 does not mention 'the parts', the notification is inapplicable to the parts, will be to amend the notification, which the court will not do. In our opinion, therefore, the notification will apply to parts of the engines mentioned under heading No. 84.06.

8. We are unable to accept the contention of the respondents that 'the parts' referred to in paragraph 2 of column (2) of the Table must be all the parts of the engines or engine in question and not a few parts thereof. Paragraph 2 of column (2) does not provide that it must be all the parts of the engine or engines. It simply provides 'parts thereof'. In the absence of any clear and unambiguous provision that exemption will be granted in respect of the engines, which must be all the parts constituting the engine or engines, we are not inclined to restrict the scope of the notification. Accordingly, we hold that 'parts' referred to in paragraph 2 of column (2) of the engine or engines in question. A mention of internal combustion piston engines under Heading No. 84.06 not only contemplates the engine or engines, but also the parts thereof. So, although the parts are not mentioned under Heading No. 84.06, by necessary implication and in the context of the notification, it includes the parts of the engine. We are, therefore, of the view that parts of the engine or engines, mentioned under Heading No. 84.06, will get the benefit of exemption under the notification.

9. It is has been held by the Appellate Tribunal and it is also the contention of the learned Additional Solicitor General that bushings and bearings are identical articles. It seems that the Appellate Tribunal was influenced by the fact that the functions of the bushings and bearings are the same. It may be that two articles have the same functions but, nonetheless, they are distinct and separate. As the functions of bushings are the same as that of the bearings, sometimes bushings are also called bearings, as pointed out by the Appellate Tribunal. But when these two articles are known in the market by two different names, it is difficult to uphold the contention that they are same and identical, even though they perform the same functions. We, therefore, do not agree with the finding of the Appellate Tribunal and the customs authorities that bushings and bearings are same and identical.

10. In view of our findings that the notification exempts also parts of the engines mentioned in paragraph 2 of column (2) of the Table, in order to avail of the benefit of the exemption granted by the notification, it has to be proved that the parts in respect of which the exemption is claimed, are parts of the internal combustion piston engine, as mentioned under Heading No. 84.06. Some of such parts may have been included under heading No. 84.63. In other words, as soon as it is proved that the parts are of the engines, mentioned in Heading No. 84.06, such parts will get the benefit of exemption as provided by the notification, irrespective of the fact that they or any or some of them have already been included under Heading No. 84.63 or under any other heading. Therefore, even if bushings are the same as bearings, still they would come within the preview of the notification, provided they are parts of the engines mentioned under Heading No. 84.06. The contention of the customs authorities that the article which is provided under another heading other than Heading No. 84.06. The contention of the customs authorities that the article, which is provided under another heading other Heading No. 84.06, will not get the exemption as provided in the notification, is not readily understandable. When the notification grants exemption to the parts of the engines, as mentioned under heading No. 84.06, we find no reason to exclude any of such parts simply because it is included under another heading. The intention of the notification is clear enough to provide that the parts of the engines, mentioned under Heading No. 84.06. will get the exemption under the notification and in the absence of any provision to the contrary, we are unable to hold that the parts of the engines, which are included under a heading other than Heading No. 84.06, are excluded from the benefit of the notification.

11. In the instant case, there is no material or evidence nor is there any finding of the Appellate Tribunal or the customs authorities that the bushes, which have been imported by the appellant, are parts of internal combustion piston engines falling under Heading No. 84.06. In the circumstances, it is necessary that the customs authorities should embark upon the question and decide whether the bushes, imported by the appellant, are really parts of such engines.

12. For the reasons aforesaid, we set aside the order of the Appellate Tribunal and of the customs authorities and send the case back to the Collector of Customs with a direction to decide, after giving an opportunity to the appellant, whether the bushes imported by the appellant are parts of the internal combustion piston engines, as mentioned under Heading No. 84.06.

13. The appeal is allowed, but in view of the facts and circumstances of the case, there will be no order as to costs.

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