**SUPREME COURT OF INDIA**

G.S. Auto International Limited

Versus

Collector of Central Excise, Chandigarh

15.1.2003

(Syed Shah Mohammed Quadri and Ashok Bhan, JJ. )

Civil Appeal No. 4598-4612 of 1994 with Civil Appeal Nos. 5711 of 1999 and 5701-5705 of 2001.

**JUDGMENT**

**Syed Shah Mohammed Quadri, J. -**This bunch of appeals raises a common question of classification of certain goods (thirty two items), which will be referred to presently, manufactured by the assessee-appellant in Civil Appeal Nos. 4598-4612 of 1994 (the first set of appeals) which are directed against the final judgment and order of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (for short, `the C.E.G.A.T.') in Appeal Nos. E-5455-5469/92-D dated November 22, 1993 and the order in Rectification Application No. E/41/93-D passed on March 3, 1994. The second set of appeals, Civil Appeal Nos. 5701-5705 of 2001, filed by the Revenue, is from final judgment and order in Appeal Nos. E-289-293/1988-D dated January 9, 2001. All these twenty appeals relate to the Assessment Years 1979 to 1986, albeit, for different periods. Civil Appeal No. 5711 of 1999 is filed by the Revenue, dissatisfied by the final judgment and order of the C.E.G.A.T. in Final Order No. 351/99-B in Appeal No. E/2483/1992-B passed on April 6, 1999 and it relates to the Assessment year 1986-87.

2. In the order impugned in the first set of appeals, the Tribunal applied the functional test and classified those thirty two items, manufactured by the assessee, under Tariff Item 52 of the First Schedule to the Central Excise Act, 1944. The classification was based on the finding recorded by the Tribunal, after referring to the findings in the identical case of *Ms. Hindustan Motors Limited v. Collector of Central Excise, Calcutta [Tribunal's Order No. E/333/93-D dated 6th October, 1993 in Appeal No. E/882/85-D].* The finding reads as follows :

".....the Tribunal had clearly held that goods, *even though used as component parts of motor vehicles* having a fastening function primarily, are to be classified under Item 52 C.E.T."

(Emphasis supplied)

Two points may be noted in this finding. (1) the goods in question are component parts of motor vehicles; and (2) the function of those goods is the fastening of parts.

3. For the same assessment years but for a different period, the Tribunal, in its order

dated January 9, 2001 (subject-matter of Civil Appeal Nos. 5701-5705 of 2001), approved the following findings recorded by the Collector (Appeals) with regard to the same goods :

"I observe that these are specially designed parts for use in automobile vehicles, sold in unit and as per part numbers of the original vehicle manufacturers. They are not inter-changeable and can be marketed only by auto-vehicle part dealers. Each and every part in question has code number, vehicle in which they can be used, their nomenclature, description marking and part number. On careful examination of these samples, I find that some of the items are not even threaded. They are suitable for use only in different motor vehicles according to their specifications. *As per the sample and catalogue, by no stretch of imagination these items in question can be termed as general type of fasteners."*

(Emphasis supplied)

4. Referring to the test applied by this Court in *Purewal Associates Limited v. Collector of Central Excise (87 E.L.T. 321),* the Tribunal held :

"No one uses these parts as general parts of bolts and nuts. Some parts are such that they can, if one wants, be used as a general purpose bolt or nut. This type of stray use of which they may be put cannot take them out of the category of parts of Automobile. The materials now made available namely the catalogue, affidavits given by dealers in automobile parts and the communications received from M/s. Maruti Udyog Ltd., M/s. Mahindra and Mahindra, M/s. Daewoo Motors show that these goods manufactured are specialised parts required for automobiles. These parts are manufactured at the instance of automobile manufacturers and they procure it as original equipment or replacement parts. No iota of evidence is forthcoming from the Revenue to show that these parts are ever made available in the market as bolt and nuts or that they are in common use as bolts and nuts as understood in ordinary or common parlance."

5. On those findings of fact, it was held that the goods in question did not fall under Tariff Item 52 and, being virtually parts of automobile, were classifiable under Tariff Item 68.

6. On the basis of similar findings and following the principle laid down in Purewal Associates Limited (supra), the Tribunal [in the order in question in Civil Appeal No. 5711 of 1999], having regard to the change of scheme of classification of goods under the Central Excise Tariff Act, 1985 held, for the Assessment Year 1986-87, that the said goods were classifiable under Chapter Heading 87.07 and not under Chapter Heading 73.18, as contended by the Revenue.

7. Mr. S. Ganesh, learned senior counsel appearing for the assessee, contends that inasmuch as the test laid down in Purewal Associates Limited (supra), namely, the test of commercial identity, was not available to the Tribunal when it passed the order, now subject-matter of the first set of appeals, it erred in applying the functional test and holding that the goods in question are classifiable under Tariff Item 52, as it existed prior to the commencement of the Central Excise Tariff Act, 1985 and, therefore, the order of the Tribunal is liable to be set aside. He submits that after having the benefit of

the law laid down by this Court in Purewal Associates Limited (supra), the Tribunal applied the correct test of commercial identity in its orders, which are subject-matter of the second set of appeals and the third appeal, which deserve to be upheld.

8. Ms. Nisha Bagchi, learned counsel appearing for the Revenue, vehemently contends that in regard to pre-1986 period, both the findings recorded by the Tribunal as well as the function of the goods would show that they are nothing but nuts and bolts classificable under Tariff Item 52; in regard to the classification under post-1986 period, she invited our attention to Notes 2(b) and (3) of Section XVII read with Note 2(a) of Section XV to show that Chapter Heading 73.18 takes in screws, bolts, nuts, etc. and that the expressions "parts" and "parts and accessories" have been defined in Section XVII, Note 2(b). Inasmuch as Note (2) to Section XV takes away the goods classifiable under Chapter Heading 73.02, therefore, the goods in question have to be classified only as nuts, bolts, screws even if they formed parts of automobile.

9. Mr. Dileep Tandon, learned counsel appearing for the Revenue in Civil Appeal Nos. 4598-4612 of 1994, strenuously contends that nuts, bolts and screws, etc, are generic terms and notwithstanding the fact that they are parts of automobile, they would nonetheless be species of nuts and bolts and ought to be classified as such under Tariff Item 52. He relies upon the latter part of the judgment in Purewal Associates Limited (supra) which deals with nuts and bolts, etc., in support of his contention.

10. The controversy in these appeals pertains to the classification of the following goods : (1) Sprint Centre Bolts with Nuts; (2) Spring U Bolt with Nuts; (3) Spring U Clamps with nuts and plates; (4) Spring Shackle Pin (Shackle Bolt) with Nuts; (5) Spring Shackle Pin (Spring Pin); (6) Hub Bolts and Nut Chevrolets; (7) Hub Bolt and Nut Chev Viking; (8) Hub Bolt and Nut Tata Diesel Vehicle; (9) Hub Bolt and Nut Dodge B.I.F.; (10) Hub Bolt and Nut Dodge K.E.W.; (11) Hub Bolt and Nut Dodge Timken; (12) Hub Bolt and Nut Dodge Rocket; (13) Hub Bolt and Nut Leyland; (14) Hub Bolt and Nut Ford V.8.; (15) Hub Bolt and Nut Ford Kekra and Ford Thames; (16) Hub Bolt and Nut Bedford J-4 and J-6; (17) Hub Bolt and Nut Shaktiman and Jeep; (18) Hub Bolt and Nut Benz 10 Ton; (19) Hub Bolt and Nut Minibus; (20) Hub Bolt and Nut Square Type; (21) Hub Bolt and Nut Peyken; (22) Genuine Nuts; (23) Azle Studs with Nuts; (24) Hub Bolt and Washers; (25) Checknuts; (26) Shaft Bolts; (27) Misc. Bolts; (28) Sprint Shackle Assembly; (29) Gun Metal Bushes; (30) King Pin King Pin Unit; (31) Fan Blades; and (32) Spring Hanger and Brackets.

11. As the controversy centres round Tariff Items 52 and 68 in the First Schedule of the Central Excise Act, 1944, it will be apt to refer them here. They read as follows :

Explanation :- The expression "Bolts and nuts,, threaded or tapped and screws" used in this item shall include bolt ends,, screw studs,, screw studding,, self-tapped screws,, screw hooks and screw rings.

| Item No. | Description of goods | Rate of duty | (1) | (2)</TD(3) |
|---|---|---|---|---|
| | | | 52 | Bolts and nuts threaded or tapped and screws of base metal or alloys thereofin or in relation to the manufacture of which any process is ordinarily carried on with the aid of power |

| Item No. | Description of goods | Rate of duty | (1) | (2) | (3) |
|---|---|---|---|---|---|
| 68. | All other goods not elsewhere specified | but excluding | Twelve per cent *ad valorem* | (a)alcohol, all sorts, including alcoholic liquors for human consumption; | (b)opium |

| | | |
|---|---|---|
| Indian hemp and other narcotic drugs and narcotics; | (c) | dutiable goods as defined in section 2(c) of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955). |

Explanation :- For the purposes of this item,, goods which are referred to in any preceding item in this Schedule for the purpose of excluding such goods from the description of goods in that item (Whether such exclusion is by means of an Explana

tion to such item or by words of exclusion in the description itself or in any other manner) shall be deemed to be goods not specified in that item.

12. From a perusal of the above excerpts of the Tariff Items, it is clear that bolts and nuts, threaded or tapped and screws, base metal or alloys thereof, in or in relation to manufacture of which any process in ordinarily carried on with the aid of power are classifiable under Tariff Item 52 and liable to duty at the rate of fifteen per cent *ad valorem.* Tariff Item 68 is a residuary entry. All goods which are not specified elsewhere, except those which are excluded thereunder, are grouped under this Item. We may note here that nuts and bolts do not fall in the category of excluded goods under Tariff Item 68. The rate of duty payable on goods falling under this Item is twelve per cent *ad valorem.*

13. It may be useful to refer to Tariff Item 34-A of the said First Schedule, on which reliance was placed by the learned counsel appearing for the Revenue, which is in the following terms :

| Item No. | Description of goods | Rate of duty | |
|---|---|---|---|
| (3) | 34A., (12)) | Parts and accessories | (i) Brake lining (ii) Clutch facing (iii) Engine valves (iv) Gaskets (v) Nozzle sand nozzle holds (vi) Pistons (vii) Piston rings (viii) Gudgeon pins (ix) Circlips (x) Shock absorbers (xi) Spark plugs (xii) Tin-walled bearings (xiii) Terminals (xiv) Electric horns; (xv) Filter elements, inserts and cartridges | *Explanation-I* :- The expression "Motor vehi | *Explanation II* :- The expression "Tracto |

| | | | | | |
|---|---|---|---|---|---|
| of Motor Vehicles and Tractors, including Trailers,, the following namely:-, Twenty per cent *ad valorem* | er s | . | cles" has the meaning assigned to it in Item No. 34. | rs" shall include agricultural tractors. |

14. This Tariff Item takes in its fold fifteen parts and accessories of Motor Vehicles and Tractors. It may be noted here that the goods in question, which are claimed to be motor parts, are not included within the specified goods mentioned in Tariff Item 34-A.

15. The question that needs to be adverted to is : whether the goods in question can appropriately be classified under Tariff Item 52 or not having been specified elsewhere, they fall under Tariff Item 68. In construing these items, what is the proper test to be applied ? Is it the functional test or is it commercial identity test which would determine the issue. It seems to us that this question is no longer *res integra.* It fell for consideration of this Court earlier and it was laid down that the true test for classification was the test of commercial identity and not the functional test. It needs to be ascertained as to how the goods in question are referred to in the market by those who deal with them, be it for the purposes of selling, purchasing or otherwise.

16. In *Jaishri Engineering Co. (P) Ltd. v. Collector of Central Excise (40 E.L.T. 214),* this Court considered the question whether High Pressure Connectors meant for lubricating purposes were classifiable under Tariff Item 52 of the Central Excise Tariff as `nuts' or under Tariff Item 68 as `integral part of diesel engine pipes'. It was found that the said goods were not manufactured according to any special specifications as integral parts of machinery, rather some of these nuts were also purchased from the market while those being manufactured by the assessee were also sold to outside buyers as nuts; further, those goods were commercially known and bought and sold as nuts. On that finding, it was held that they were classifiable under Tariff Item 52.

17. In Purewal Associates Limited (supra), two appeals were dealt with by this Court. The subject-matter of the first appeal was classification of screws, Lid screws, Barrel axle screw, Bridge screw and the Dial Key screw which were used as parts in manufacturing watches. It was contended that they would fall under Tariff Item 52 as they were nothing but screws. It was observed that the Tribunal had rightly taken note of the test laid down by this Court in several decisions but misdirected itself in applying it. The test is that while interpreting the entries in the Schedule, they must be construed and understood as in common parlance and words used by the Legislature must be given their popular sense, namely that sense people conversant with the subject-matter with which the statute was dealing would attribute to it. Applying the test of commercial parlance for identity of the goods and referring to the observation of this Court in *Plasmac Machine Mfg. Co. Pvt. Ltd. v. Collector of Central Excise (51 E.L.T. 161),* it was held that the goods were classifiable under Tariff Item 68. The other appeal dealt with thirty two articles of different kinds of connecting rod bolts (bolt rear wheel, bolt front wheel, etc). It is on this part of the judgment that Mr. Dileep Tandon has placed strong reliance to show that nuts and bolts even if integral parts of machinery would be falling under Tariff Item 52. It would be useful to notice here the following observation in paragraph (16) :

16. Before us the materials in question were produced and we could appreciate the conclusion that they are nuts and bolts as commonly understood though they differ in shape and are manufactured to order."

18. The Court approved the conclusion of the Tribunal. It is worth noticing that whereas in the appeal relating to part of watches, the Tribunal misdirected itself in applying the correct test, therefore, it warranted interference with the conclusion arrived at by the Tribunal butt in the appeal dealing with nuts and bolts as the Tribunal has noted the correct test and properly applied it, there was no reason to interfere with the result which was arrived on the basis of the findings of fact.

19. In interpreting Tariff Item 52, we may usefully refer to Excise Collector's Trade Notice No. 127/71 dated 5th July, 1971. It would be apt to read it here :

"Mere existence of threads would not render an article as a bolt, nut or screw if it is recognisable as component part of an instrument, apparatus, appliance or machine. The tariff definition of Item 52 is intended to cover only those which are known as bolts, nuts and screws in the market."

20. From a perusal of the Trade Notice, two aspects become apparent. The first is that

mere existence of threads would not render an article as a bolt, nut or screw *so long as that is recognisable as component part of an instrument, apparatus, appliance or machine* and the second is that the expression used in Tariff Item 52 is *intended to cover only those which are known as bolts, nuts and screws in the market.* The Trade Notice re-affirms the commercial identity of goods test. Keeping these two aspects in view, if one applies the afore-mentioned test, one cannot identify, sell or purchase the goods in question as nuts, bolts, etc. The decision of this Court in Purewal Associates Limited (supra) furnishes a good example of application of the test on the findings of fact recorded by the Tribunal. With regard to the parts of the watches, various types of screws were recognised as component parts of instruments and they were held not to fall under Tariff Item 52; in regard to bolts and screws used in motors, as it was found that they were not manufactured as component parts of automobile, so they were held as classifiable under Tariff Item 52.

21. In the light of the above discussion, if we read the findings of fact recorded by the Tribunal in the appeals before us, referred to above, it cannot but be concluded that the goods in question, which are found to be parts of automobile were wrongly classified under Tariff Item 52 by the Tribunal in Civil Appeal Nos. 4598-4612 of 1994 and were rightly classified as falling under Tariff Item 68 in Civil Appeal Nos. 5701-5705 of 2001.

22. So far as Civil Appeal No. 5711 of 1999 is concerned, the classification of goods was done under the Central Excise Tariff Act, 1985 (for the post-1986 period). The competing Heading numbers are 73.18 and 87.08, which read as under :-

| Heading No. | Sub-Heading No. | Description of goods | Rate of duty | (1) | (2) | (3) | (4) | |
|---|---|---|---|---|---|---|---|---|
| 73.18 | | Screws, bolts, nuts, coach-screws, screw-hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of | | | | | | |
| | 7318.10 | - Threaded articles | 20% | | | | | |
| Heading No. | Sub-Heading No. | Description of goods | Rate of duty | (1) | (2) | (3) | (4) | |
| 87.08 | | Parts and accessories of the motor vehicles of heading Nos. 8701 to 87.05 | 20% | | | | | |
| | 8708.00 | | | | | | | |

iron or
steel

23. Now, we shall refer to the relevant notes under Sections XVII and XV respectively.

Notes 2(b) and (3) of Section XVII read as follows :

"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 :

(a) xxx, xxx

(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 of accessory."

24. Section XVII deals with Vehicles, Aircraft, Vessels and Associated Transport Equipment, Note 2 says that the expression "parts" and "parts and accessories" do not apply to the articles mentioned in clauses (a) to (1) thereunder. In clause (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), are mentioned. This takes us to Note 2(a) to Chapter XV, which provides that throughout that Schedule, the expression "parts of general use" means :

"(a) Articles of Heading No. 73.07, 73.12, 73.15, 73.17 or 73.18 and similar articles of other base metal;"

25. Note 3 says that 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 primarily with the articles of those chapters and that a part or accessory which answers to a description in two or more headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part of accessory.

26. A conjoint reading of the Notes, referred to above, would show that the expression "parts of general use" throughout the Schedule, means, *inter alia,* articles of Heading No. 73.18 and similar articles of other base metal; and the expression `part and accessories' in Chapter Heading 87.08 does not apply to parts or accessories which are not suitable for use solely or primarily with articles of Chapter Heading 87.08 which pertains to parts and accessories of motor vehicles of Chapter Heading Nos. 87.01 to 87.05. For the purposes of classification under Chapter Heading 87.08, the test to be applied is : whether the goods are suitable for use solely or primarily with articles of Chapter Heading Nos. 87.01 to 87.05; if the answer is in the affirmative, the goods will be classifiable under Chapter Heading 87.08, but if the answer is in the negative, they would have to be classified under Chapter Heading No. 73.18. Having regard to the finding that the goods in question cannot but be regarded as parts of automobiles, it has

to be held that they are suitable for use primarily with articles of Chapter Heading Nos. 87.01 to 87.05. It follows that the goods in question cannot be treated as falling under Chapter Heading No. 73.18 and that they can properly be classified under Chapter Heading No. 87.08 of the Central Excise Tariff Act, 1985.

27. In this view of the matter, the judgments and orders of the Tribunal under challenge in the first set of appeals (Civil Appeal Nos. 4598-4612 of 1994) are set aside and the appeals filed by the assessee are allowed. The judgment of the Tribunal under challenge in the second set of appeals (Civil Appeal Nos. 5701-5705 of 2001) and the order impugned in the third appeal (Civil Appeal No. 5711 of 1999) are confirmed and accordingly, the appeals filed by the Revenue are dismissed with costs.

Order accordingly.