

SUPREME COURT OF INDIA

M/s Intel Design Systems (India) P. Ltd

Vs.

Commissioner of Customs & Central Excise

C.A.No.4564 of 2002

(Arijit Pasayat and Lokeshwar Singh Panta JJ.)

11.02.2008

JUDGMENT

Arijit Pasayat, J.

1. Challenge in this appeal is to the order passed by the Customs, Excise and Gold (Control) Appellate Tribunal, Fort, Mumbai (in short 'cegat') dismissing the appeal filed by the appellant questioning correctness of the order in appeal dated 27.10.1999 passed by Commissioner, Customs and Central Excise (Appeals), Pune (in short 'Commissioner (Appeals)').

2. Background facts in a nutshell are as follows:

“The appellant, engaged in the manufacture of excisable goods, inter alia, filed classification list of their products mentioned at Sr. No.1(a) to (u) of the classification declaration with effect from 20.12.1996 claiming classification under Chapter Heading 8710 of the Schedule to the Central Excise Tariff Act, 1985 (in short the 'Tariff Act'). The goods in the classification list were described as parts of tanks and other armoured and motorized fighting vehicles under Chapter Sub-Heading 8710.00 of the Tariff Act. It is the contention of the appellants that the said goods are manufactured for Government of India, Ministry of Defence and are used in the tanks and armoured fighting vehicles. These goods are strictly manufactured as per drawing and design supplied by the customer i.e. Ministry of Defence. Since the goods are manufactured for use solely and principally for fitting into the tanks in armoured fighting vehicles of the Defence Department, the correct classification would be under Chapter sub-heading 8710.00. In support of their contention, they have also relied upon the Circular No.17/90 CEX IV dated 9.7.1990 in which it was clarified that transmission elements, switches, gears, gearing etc. do not fall under Chapter Heading 84.83 when they are specifically designed for use in the vehicles of Section XVII of the Tariff. In support they have submitted CT2 certificate received from Superintendent, Central Excise, and Madras wherein it was stated that said goods are

classifiable under Chapter Heading 8710. In view of the evidence, it was contended that their classification under Chapter Heading 8710 was in order. On the other hand, the adjudicating authority relied upon Note 2(f) to Section XVII which excludes the goods i.e. electrical machinery and equipment falling under Chapter 85 and since the appellants' manufacture goods such as contractors, switches, control box etc. and are used for switching/protecting electrical circuits or for making connections to or in electric circuits, these are parts of electrical equipments falling under chapter sub-heading 8536.90 and CBEC circular was, therefore, not relevant. Moreover, reliance was placed on the interpretative Rule 3(a) which provide that specific entry shall be preferred to the heading providing more general description. Accordingly, Assistant Commissioner classified the goods under chapter sub-heading 8536.90 and confirmed the demand. Cegat dismissed the appeal filed by the appellant.”

3. Learned counsel for the appellant submitted that the classification list for period in question was submitted on 9.4.1997 for the previous periods. Such classification lists were approved. The show-cause notice was issued by the Department proposing to levy duty under Heading 8536.90. The Department had not proved that articles fall within Heading 8536.90. It has also relied on Circular No.17/90-CX.4, dated 9.7.1990. A note II has no application because Department has not proved that the articles fall under Chapter 85. Leaned counsel for the respondent supported the orders.

4. It is to be noted that the CEGAT has held that goods are identifiable as goods under Chapter 8536.90. The authorities have categorically held that the article falls under Chapter 85.

5. As per Rule 1 on Interpretive Rules, classification of excisable goods is to be determined according to the terms of the Heading and in terms of Section/Chapter notes. Note 2(f) to Section XVII (which governs Chapter 87) excludes the goods viz. electrical machinery and equipment (Chapter 85). The goods in question i.e. contractors, switches, control box etc. are the goods used for switching, protecting electrical circuits or for making connections to or in electric circuit. These parts/components are specifically covered under CSH 8536.90. The CBEC Circular relied upon by the assesses is not relevant.

6. As per the Explanatory Notes to HSN the parts falling under Chapter Heading 8710 would be covered under the said chapter, provided they fulfill both the conditions i.e. they must be identifiable as being suitable for use solely or principally for such vehicles and that they must not be excluded by the provisions of Notes to Section XVII. The identifiable parts under the said heading bodies of armored vehicles and parts thereof, cover special road wheels for armoured cars, propulsion wheels for tanks, tracts etc. As per this requirement, the goods should not only be identifiable to be armored vehicles, but it should so not have been excluded by Notes to Section XVII. The Chapter note 2(f) excludes electrical machinery and equipment falling under Chapter 85. Explanatory Notes to HSN relating to the parts and accessories excluded by Note 2 specify items with reference to specific Chapter Heading as per (7) (a), (k) which excludes photographs and other current collectors for electric traction

vehicles, fuses, switches and other electric apparatus of Heading No.85.35 or 85.36. The items, therefore, manufactured by the appellants are identifiable or are in the nature of goods falling under Chapter Heading 85.36. Since these fall under the category of excluded goods under Chapter Notes, even though they are used specifically solely or principally with the armored vehicles of Chapter Heading 8710, they are classifiable under Chapter Heading 8536.90 only as held by the adjudicating authority.

7. The appeal is therefore sans merit, deserves dismissal which we direct.