SUPREME COURT OF INDIA

Commissioner of Customs, New Delhi

Vs

Sony India Ltd.

C.A.No. 8236 of 2002

(Ashok Bhan and V.S. Sirpurkar JJ)

23.09.2008

JUDGMENT

V.S. SIRPURKAR, J.

1. An Order by Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter called "the Tribunal" for short), allowing the appeal filed by M/s Sony India Ltd. (the respondent herein), is in challenge at the instance of the appellant herein. The said appeal was filed challenging the order-in-original dated 30.1.1999, passed by Commissioner of Customs, Inland Container Depot, Tughlakabad, New Delhi, wherein the said Authority had confirmed the said differential duty demand of Rs.42,89,75,196/- under the Proviso to Section 28(1) of the Customs Act, 1962 (hereinafter referred to as "the Act"). The penalty was also imposed amounting to Rs.30,19,92,183/- under Section 112(a) read with Section 114(a) with interest under Section 28 AB of the Act. By the order of the Commissioner,the import of several parts of Colour Television (hereinafter called "CTV" for short) made by the appellant for the period from April 1995 to 1997 were treated as import of complete CTV Sets for the purpose of assessment by the Commissioner.

2. Initially, there was difference of opinion amongst the two Learned Members of the Tribunal on the application of Rule 2(a) of the General Rules for Interpretation under First Schedule of Import Tariff, on the basis of which the order-in-original was passed. Accordingly, the following questions were referred to the larger Bench of the Tribunal:-

"Whether the goods in question are components and cannot be treated as complete colour Television sets and hence the duty demand, confiscation of penalty are unsustainable as held by Ld. Member (J.)?

Whether the issue as to the circumstances under which Rule 2 (a) of the Interpretative Rules can be applied, as to whether the benefit of Notification exempting components only will be available, if the product is considered as complete or finished article by virtue of deemed provision of Rule 2(a), and whether the change effected in Explanatory Notes of HSN will give only prospective application or it will be applicable for the earlier period also, requires to be referred to a Larger Bench, as held by Ld. Member (T.)?"

Ultimately, the larger Bench seems to have agreed with the view expressed by the Ld. Member (Judicial) to the effect that components imported by the appellant could not be treated as complete CTV Sets. The larger Bench also held that the duty demand, direction for confiscation and imposition of penalty were unsustainable in law. Accordingly, the order-in-original passed by the Commissioner was set aside, allowing the appeal. It is this order of the larger Bench of the Tribunal, which is in challenge before us.

3. Shri Vikas Singh, Ld. Additional Solicitor General (ASG) of India, painstakingly took us through the impugned order of the Tribunal, as also to the records including the Show Cause Notice dated 4.3.1997. The main plank of the argument is based on that Notice, whereunder the Revenue asserted the evasion of duty on the part of the respondent on the CKD (completely knocked down) Kits of CTVs by misdeclaring them as CTV components and also proposed their confiscation under Section 111(m) of the Act. In addition, the Revenue also asserted that the respondents had contravened the provisions of the Exim Policy 1992-97 by importing CKD Kits of the CTVs without an import license and thereby making the goods liable for confiscation under Section 111(d) of the Act.

4. The Show Cause Notice further refers to an exhaustive list of components imported by the respondents which go into the manufacture of CTVs of models KV-2185 GE, KV-2197 PF and KV-2167 MT. Heavy reliance is placed on the First Purchase Order No. IN-31PI-10 dt. 27.11.1994 placed by Sony India Pvt. Ltd. on Sony International (Singapore) Ltd. It was on the basis of this order, which was treated to be an order for 1500 CKD Kits of CTVs for the model KV-2185 GE only. The Show Cause Notice also gives not only the quantity actually imported, but also points out the quantity required for 1500 CTVs. The list consists of 100 such components and it was the assertion on the part of the Revenue that all these components were nothing, but 1500 CTVs, for

which the order was placed on 27.11.1994. There are some other assertions regarding some other items, which were once used, but discontinued to be used, probably with an idea to show that the components mentioned in the list were nothing, but 1500 CTVs. It was, however, clarified that the items at S.Nos. 93, 94, 95, 97 and 98 could not be considered to be the components or parts of CTVs. The assertion in the Show Cause Notice, therefore, is that though the respondent was importing the CKD Kits of CTVs for their assembly in India, which attracted higher customs duty, the said imports were being shown as the imports of the components of the CTVs, attracting lesser customs duty and as such, the respondent was liable to pay not only the differential duty, but also the penalties on account of the clandestine imports. A reference was also made in paragraph 8 of the Show Cause Notice to Rule 2(a) of the General Rules for the Interpretation of the First Schedule to the Customs Tariff Act, 1975 and it was conveyed that any reference in a heading to an article should be taken to include a reference to that article in complete or unfinished, if the incomplete or unfinished article has the essential character of the complete or finished article. It was on this basis that the respondent was accused of misdeclaration of imported goods, as also breach of the Exim Policy. A reference in the said Show Cause Notice was made to the reply dated 20.9.1996. However, relying fully on Rule 2(a), it was asserted that the respondent was guilty of misdeclaration and confiscation of the imported CKD Kits. In short, the assertion was that though the respondent had imported the CKD Kits and had placed order therefor, numbering 1500 in all, in that order, it had paid a lesser duty, showing it as import of components, on which there was lesser duty, and as such, the respondent had breached the provisions of the Act and had made itself liable for the confiscation and imposition of differential duties and also the penalties. Shri Vikas Singh, Ld. ASG heavily relied on Rule 2(a), which was referred to by us in the earlier part of the judgment. In addition to this, the assertion of Shri Singh was that the question was considered by this Court and decided in favour of Revenue in a decision reported in (2007) 10 SCC 114 Commissioner of Customs, New Delhi Vs. Phoenix International Ltd. & Anr.

5. Shri V. Lakshmi Kumaran, learned counsel appearing on behalf of the respondent, however, pointed out that the Tribunal had correctly deduced that the components imported by the respondent could not amount to the CKD Kits. According to him, there was no evidence available to suggest that the respondent had used these very components in the manufacture of the CTVs. He disputed the claim on the part of the Revenue that these components could and did form the complete CKD Kits of 1500 CTVs. He pointed out that these could not have been used, as they were imported in the manufacture of CTVs and there was a complicated manufacturing process involved, according to which the components which were imported, had to be treated and processed before they could be used for the manufacture of CTVs. He further points out that not only the customs duty was paid on these components, treating them as components, but the respondent had also paid substantial excise duty on the manufacture of these CTVs in Crores, which belied the claim of the Revenue that these were not merely the components, but amounted to the import of CKD Kits of CTVs. Shri Lakshmi Kumaran also seriously disputed the interpretation, put forward by the Revenue on Rule 2(a) and asserted that Rule 2(a) was not even applicable in the present case. We were taken through number of entries and the notes by the learned counsel. He also relied on number of decisions of this Court, as also the High Courts and finally submitted that the decision in Phoenix International Ltd. Case (cited supra) was not applicable to the facts of the present case, as the said decision turned on its own facts, peculiar to that case. It is on this backdrop that we have to consider the questions involved.

6. The Learned ASG opened up his arguments by a proposition that the issue involved in the present Appeal is covered fully by the judgment of this court in Phoenix International Ltd. Case (cited supra). We would first consider as to whether all the issues are closed in favour of the Revenue in that judgment. This was the case, where various parts of the shoes, namely shoe uppers, outer soles, insoles and sock liners were imported by M/s. Phoenix Industries Ltd. ("PIND" for short) in the same container. It was the claim of the Revenue that they could be considered as the import of the shoe in SKD (Semi knocked down) condition. However, the importer had declared them only to be the components. It was on that basis that the matters proceeded. The Court first came to the conclusion that a synthetic shoe consists of the vital parts, namely, the synthetic shoe uppers, outer soles, insoles and sock liners. M/s Phoenix International Ltd. ("PIL" for short) had the license under which it was entitled to import synthetic shoes uppers, PVC compounds and natural rubber. However, the importer PIL had imported 5215 pairs on 16.1.1996 on a declared value, while on the same day, PIND imported soles and insoles numbering 5151 pairs. The Court noted that while PIL had imported synthetic uppers under DEEC Scheme, the PIND had imported the soles under Exim Policy, 1992-97. Therefore, the Department was satisfied that there was an attempt to mislead by importing the above items separately through two different companies, but in fact, it amounted to the import of the complete synthetic shoes in SKD form. The Court also noted that all the cartoons were placed in one container with the marking of "Phoenix" without specifying whether the container was meant for PIL or PIND. The Court also noted that in the Show Cause Notice, it was claimed that the import orders had been placed by the above two companies with the same supplier in Bangkok and that both the import orders were signed by Mr. Bhupinder Nagpal, General Manager of PIL. It was also alleged in the Show Cause Notice that import invoices filed by the two companies referred to the same proforma invoice dt. 2.11.1995, which was placed by Mr. Bhupinder Nagpal on behalf of both the companies. The Court also further noted that in the Show Cause Notice, it was specifically pointed out that the consumer items were placed in the negative list vide Para 156(A) of Exim Policy, 1992-97 and under the said Para, the consumer goods in SKD form or ready-to-assemble condition were required to be imported under specific import license and that the synthetic shoe amounted to a consumer item and as such, had required specific import license and, therefore, it was further alleged in the Show Cause Notice that the importer had imported the goods in SKD form or ready-to-assemble condition without specific import license. The Court further noted that in the Show Cause Notice, it was further alleged that the PIL had resorted to the above subterfuge by importing the uppers of "Reebok" shoes in their own name and the remaining three components in the name of PIND in order to bypass restriction imposed by Para 156(A) of Exim Policy. The Court also noted that the Department had alleged in the Show Cause Notice that a loan of Rs.11.7 crores was advanced by PIL to PIND which was interest free loan during the year ending 31.3.1995 and a loan of Rs.7.7 crores was also advanced to the same company, which was also interest free during the financial year ending 31.3.1994. The Court noted that it was under these circumstances it was alleged that the good imported were not parts or the components, but, were SKD goods, liable to be assessed as complete finished goods under Tariff Sub-heading 6404.19 of the First Schedule of the Customs Tariff Act, 1975 and was liable to the higher duty ad valorem and countervailing duty at 15% ad valorem. The Court further referred to the replies sent by PIND and PIL and came to the conclusion that in that case, the intention would play important role, since it was the case of duty-evasion on imports.The Court came to the conclusion that it was clear that the entire device of bifurcation was arranged in order to bypass the restrictions imposed vide Para 156(A) of the Exim Policy and the importer had found out the device for evading the import duty. The Court further wondered as to why the three units of PIL did not import all the four items when it was in complete charge of manufacturing the said shoes. The Court, therefore, came to the conclusion that the bifurcation was unnatural and it was cleared that if the imports of two

companies, namely, PIND and PIL were clubbed, it was nothing, but the import of the shoes, which was in the negative list. The Court wrote the finding that:

"Therefore, it is clear that the above device of importation of one item by PIL and three items by PIND was a subterfuge/fictitious arrangement intended to deceive the Department and fraud on Para 156(A) of Exim Policy, 1992- 97."

It was under these circumstances that the Court came to the conclusion that the imports made by the two companies were fraudulent and with the sole objective to deceive the Department.

7. Though, the Ld. ASG heavily relied on this case to draw a parallel with the present case, we are of the clear opinion that the principles emerging out of the decision of Phoenix International Ltd. Case (cited supra) would have to be restricted to the facts in that case. Unlike in Phoenix International Ltd. Case (cited supra), there is no allegation of fraud against the present assessee. There is a complete absence of any such device or "subterfuge" in the present case, nor is there any allegation of the sort. Again the further point of differentiation is that in that case, the Court was dealing with the consumer goods like shoes and that was included in the negative list, whereas, the CKD in the present case (if at all it is to be CKD which was imported), was not in the negative list, it was in the restricted list. In our opinion, the other differentiating feature and the most important one, in our opinion, is that while the parts imported by the assessee in this case could be independently used as the spare parts or sold in the market, that was not the case in Phoenix International Ltd. Case (cited supra), at least there is no finding to that effect in Phoenix International Ltd. Case (cited supra). It was very fairly admitted by the Ld. ASG that the parts imported could be independently utilized or sold in the open market, which was not the case with the parts involved in Phoenix International Ltd. Case (cited supra). The Ld. ASG also very fairly admitted that there was a specific fraud alleged and proved on the basis of which the Court came to the conclusion that this was nothing, but a device to deceive the Revenue. We cannot also ignore the factual panorama in Phoenix International Ltd. Case (cited supra) where all the parts imported both by PIL and PIND came in one and the same container on one and the same day, which was not the case here, as the parts in the present case came during 22 months on different dates in 94 consignments. A feeble attempt was tried to be made by the Ld. ASG to suggest that all these imports were based on a single order dated 27.11.1994, in which the figure of 1500 is found to be ordered. However, it was pointed out by Mr. V. Lakshmi Kumaran that in the present case, there is no specific finding that all the parts imported could manufacture 1500 CTVs. It was also pointed out by the Ld. Counsel for the respondent that much more number of CTVs were manufactured on the basis of the imports. On the backdrop of all this, we would have to conclude that the Phoenix International Ltd. Case (cited supra) must be restricted to the facts involved therein, which cannot be matched with the facts in the present case. In the Phoenix International Ltd. Case (cited supra), it was clear that the imports of the components perfectly matched with the number of shoes, which could be prepared from those imported components. There is a finding to that effect in the decision of Phoenix International Ltd. Case (cited supra). However, on that backdrop, when we see the list of components as mentioned in the Show Cause Notice, it is clear that out of the 100 imported components, the number does not match with the components required for manufacture of 1500

CTVs in case of at least 21 items. This is another distinguishing feature. In our opinion, therefore, the arguments of the Ld. ASG that the Phoenix International Ltd. Case (cited supra) decides the question involved here in favour of Revenue, must be rejected.

8. Ld. ASG drew our attention to the order passed by the Commissioner, who had held that there was a violation of Exim Policy for period after 25.3.1996. It was pointed out that the Commissioner had relied on Rule 2(a) and on that basis, he held that the said violation was after 25.3.1996. As per Rule 2(a), the components imported had to be treated as CTVs, which attracted the higher duty as also the penalty, since the duty was paid only on the basis of the fact that it was a duty on components only.

8A. It must be better to see some facts. It must be remembered here that the respondent had clarified that in the first year of operation with the respondent Sony India Ltd., a wholly owned subsidiary of Sony Corporation, Japan, after liberalization in 1991 wanted to set up a large manufacturing facility for consumer goods like CTVs and audio products. They had clarified in their application before the Foreign Investment Promotion Board ("FIPB" in short) that in the first year of operation, there will be no indigenization and there will be a gradual increase in indigenization. It was on that basis that the respondent obtained industrial license from the Secretariat of Industrial Approval ("SIA" for short) and applied for import license for CRT and PCB, since the same were in the restricted list. All the other components were freely importable in India. The respondent obviously used Sony Singapore as their indenting agent because Sony Singapore had a close proximity with the approved vendors of Sony Corporation situated in countries like Japan, Taiwan, Thailand, Indonesia, Malaysia, China etc. All these vendors supplied the components on the basis of Minimum Order Quantity (MOQ) for the optimum utilization of containers, as also for the reduction in the transport costs, standardizing the manufacture and dispatch procedures. The advanced licenses were issued by the Director General of Foreign Trade (DGFT) for import of components duty free by availing the benefit of notification 79/65-Cus dt. 31.3.1995. A Duty Entitlement Exemption Certificate (DEEC) passbook was also maintained and it was on this basis that over a period of 22 months, 94 Bills of entry were filed for importing the various components, concerning the present case.

8B. The components were assessed under different tariff headings by applying Section Note 2 to Section XVI. It is an admitted position that the PCBs which were in the restricted list were further processed to convert them into Motherboard, which was to be used in the assembly line for the manufacture of CTVs. It is the case of the respondent that they manufactured CTVs at their Plant and they were cleared for home consumption on payment of excise duty and a percentage of them were also exported under bond. There is also no complaint about the indigenization and it is the case of the respondent that they cleared 52,640 and 1,26,009 units of CTVs and paid an excise duty of more than Rs.49 crores. As promised, the respondent also made the exports and the entries to that effect were made in the DEEC Pass book.

8C The concerned Show Cause Notice dated 4.3.1997 was restricted only to the 94 consignments of the components of CTVs imported by the respondent and it was proposed to club all these 94 consignments. A detailed reply was filed and it was asserted by the respondent that there was no violation of Exim Policy, since the goods were not in CKD/SKD condition. It was then asserted by the respondent that Rule 2(a) could not have been invoked, as it was tried to be done, since the import took place over a period of 22 months in 94 lots in containers containing different parts sourced from different countries. As has already been stated earlier, the Commissioner applied Rule 2(a) for the period subsequent to 25.3.1996. There is a clear finding given by the Commissioner that before 25.3.1996, there was no breach of Exim Policy by the respondent. Therefore, it is clear that everything depended upon the applicability of Rule 2(a) and it was solely on that basis that the breach of Exim Policy also was alleged for the period prior to 25.3.1996 when the said Rule came to the anvil. It must be noted here that against the finding of the Commissioner that there was no breach of Exim Policy by the respondent prior to 25.3.1996, there is no appeal filed by the Revenue and that finding had become final. Therefore, all the difference, which was made, was owing to Rule 2(a). We have already clarified that it is for this sole purpose that Rule 2(a) was relied upon by the Department, because such reliance alone could justify the Department's stand that the components would have to be treated as CTVs and as such, it would attract more duty. There is no difficulty in holding that the imports were perfectly in order and under the proper import license. At this juncture, we must also appreciate the finding of the Commissioner that the goods imported were sourced from different countries and the imported components were not in CKD form, at least prior to 25.3.1996.

9. It is then only due to Rule 2(a) that these components are being treated as the CTVs and that is the main plank of the argument of Mr. kas Singh, Ld. ASG. We would, therefore, consider the implication of Rule 2 (a). Rule 2(a) is as under:-

"Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provide 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."

The Ld. ASG, therefore, suggests that the articles though were not the CTVs in CKD form and were incomplete or unfinished ones, they had the essential character of complete or finished CTVs and applying this Rule, every such component, would have to be taken as an import of CTV. The Ld. ASG heavily relied on the second part of the Rule, starting from words

"It was also to be taken to new reference....." He says that every component whether it is complete or finished and which is presented in unassembled or dis-assembled condition, would have to be taken as the finished article, like CTVs in this case. In our opinion, this argument is completely illogical and again that is not the import of the language of the Rule. If the argument of

the Ld. ASG has to be accepted, then we would have to concentrate only on the later part of the Rule, ignoring the first part of the Rule and such dissection, in our opinion, is not possible. The sine qua non for the application of this Rule is that any imported article, which is "as presented", must have the essential character of the complete or finished article." This condition cannot be ignored and we cannot allow the reading only of the second part beginning with words "It was also to be taken to new reference....." for application of the Rule. The Rule must apply as a whole. Ld. ASG was not able to point out as to how the first condition can be satisfied in the present case. A mere PCB or a CRT, in our opinion, under any circumstances, cannot be held to have essential character of the CTV. It is only when this first condition is satisfied that the remaining clause would have to be read and thereby, the words "that article" used in the later part would have to pass the test of the opening words of the clause "as presented, the incomplete or unfinished article has the essential character of the complete or finished article". Once this condition is satisfied then the further clause is activated, suggesting that even when such article is in disassembled or unassembled condition, it would still be taken to be a complete article. Therefore, essentially the second part would come into play provided the component parts intended to make up the finished product are all presented for customs clearance at the same time which is not the case here.

10. In Phoenix International Ltd. & Anr. (supra) these conditions in Rule 2(a) were fully satisfied inasmuch as the spare parts of the shoes could formulate into a full pair of shoes. Though the learned Judges did not refer to that specifically in their judgment, the facts clearly suggest that Rule 2(a) was fully applicable in that case. This is one more reason why the decision in Phoenix International Ltd. & Anr. is different on facts from the present case.

11. Again the meaning of terms "as presented" in Rule 2(a) would clearly imply that the same refers to presentation of the incomplete or unfinished or unassembled or dis-assambled articles to the customs for assessment and classification purpose. It is also a settled position in law that the goods would have to be assessed in the form in which they are imported and presented to the customs and not on the basis of the finished goods manufactured after subjecting them to some process after the import is made. In the reported decision in Vareli Weaves Pvt. Ltd. v. Union of India [1996 (83) ELT 255 (SC)] the question was as to whether the countervailing duty was liable to be left on the imports made by the assessee at a stage they would reach subsequent to their import after undergoing a process. It was contended that such goods could be subjected to duty only in the State in which they were imported. It was held that the countervailing duty must be levied on goods in the State in which they are when they are imported. This was on the basis of Section 3 of the Customs Tariff Act. Though there is no reference to Rule 2(a), in our opinion, the same Rule should apply subject ofcourse to the applicability of the Rule. We have already held that the Rule is not applicable. Similar view was taken in Dunlop India and Madras Rubber Factory Ltd. v. UOI [1982 (13) ELT 1566 (SC).

12. Shri Lakshmikumaran argues on the basis of a German Court decision on which the Tribunal also relied upon. According to the learned counsel in that decision Rule 2(a) was considered and the Court took the view that the article is to be considered to be imported in unassembled or disassembled where the component parts, that is the parts which may be identified as components

intended to make up the finished product are all presented for customs clearance at the same time. The interpretation that we have given to Rule 2(a) would mean that Rule 2(a) would be applicable only and only if all the components which are intended to make a final product would have to be presented at the same time for customs clearance. Such is not the case in the present situation where the goods have been brought in 94 different consignments.

13. In Union of India v. Tarachand Gupta & Sons [(1971) 1 SCC 487] the question was whether in respect of the goods covered by Entries 294 and 295 of Schedule I, the import could have been treated under Entry 294. The Court held that when the Collector examines the goods imported under a licence in respect of goods covered by Entry 295, he has to ascertain as to whether the goods are parts and accessories and not whether the goods though parts and accessories are so comprehensive that if put together would constitute motocycle and scooters in CKD condition. The court further held that it cannot be said that if the goods were so covered by Entry 295 that when lumped together they would constitute other articles, namely, motor-cycles and scooters in CKD condition. Such a process, if adopted by the Collector, would mean that he was inserting in Entry 295, a restriction which was not there and that would tantamount to making a new entry in place of Entry 295. The Court explained the term "CKD" in para 11 and observed in para 12 that merely because the goods imported, if assembled, would make motor-cycles and scooters in CKD condition, it would not mean that there was breach of Entry 294 if the imports under Entry 295 was a valid import. What is important for the present case are the observation in para 13 to the following effect:

"Therefore, the mere fact that the goods imported by them were so complete that when put together would make them motor-cycles and scooters in CKD condition, would not amount to a breach of the licence or of Entry 295. Were that to be so, the position would be anomalous as aptly described by the High Court. Suppose that an importer were to import equal number of various parts from different countries under different indents and at different times, and the goods were to reach here in different consignments and on different dates instead of two consignments from the same country as in the present case. If the contention urged before us were to be correct, the Collector can treat them together and say that they would constitute motor-cycles and scooters in CKD condition. Such an approach would mean that there is in Entry 295 a limitation against importation of all parts and accessories of motor-cycles and scooters. Under that contention, even if the importer had sold away the first consignment or part of it, it would still b e possible for the Collector to say that had the importer desired it was possible for him to assemble all the parts and make motor-cycles and scooters in CKD condition....."

Relying on this case and referring further to the case of Girdhari Lal Bhansidhar v. Union of India [(1964) 7 SCR 62] which was distinguished in Tara Chand's case, the learned counsel also drew our attention to the judgment in Sharp Business Machines v . CCE, Bangalore [(1991) 1 SCC 154] as also the judgment of the Division Bench of the Calcutta High Court in the case of Union of India v. HCL Ltd. (unreported order). On this basis the learned counsel says that the imports made in 94 consignments could not have been clubbed together for the purposes of holding that there was a breach by the importer of the Exim Policy. The complaint of the learned ASG was that all these

judgments do not refer to Rule 2(a) as Rule 2 (a) was not on the anvil when these judgments were delivered. That may be true but the principles of law emerging would still apply. Therefore, the clubbing of all 94 consignments of different dates was not permissible.

14. We have already held that in this case the goods brought were not having the essential character of CTVs. We do not find anything to take a view that the goods were in unassembled or dis-assembled condition and they should be taken to be the complete CTVs, particularly when there is no finding recorded anywhere on facts that all these goods could make 1500 CTVs. However, we accept the argument that the goods brought in different consignments separately on the basis of valid import licences would not attract the import duty as if they were the finished goods. We have already referred to this aspect vis-`-vis the facts in Phoenix International's case where the goods were brought in one and the single congignment and they were all brought together though they were imported by two companies, i.e., PIND and PIL fraudulently.

15. Shri Lakshmikumaran, learned counsel for the respondent also drew our attention to the HSN Explanatory Notes as it stood prior to 1997 which is as under:

"(VII) For the purpose of this Rule, `articles presented unassembled or disassembled means articles the components of which are to be assembled either by means of simple fixing devices (screws, nuts, bolt, etc.) or by riveting or welding, for example, provided only simple assembly operations are involved."

Learned counsel further points out that in a decision in CCE v. Woodcraft [(1995) 3 SCC 454] this Court took the view that HSN Explanatory Notes should be referred to for understanding the true scope and meaning of expressions used in the Customs Tariff. He further points out that the Revenue did not dispute the fact that complicated processing of imported parts had to be done before they could be fit in the assembly of CTVs. Shri Vikas Singh, learned ASG also did not dispute this fact during the debate before us that a complicated process had to be exercised before these components could be brought in use for CTVs. There is also a specific finding by the Tribunal on this issue. In that view since the concerned Explanatory Note was applicable, there would be no question of treating these notes to be in unassembled or disassembled condition since a complicated process had to be exercised and then before it could be used for the assembly of the CTVs. Ofcourse this Explanatory Note was further amended by adding the words "no account is to be taken in that regard of the complexity of the assembly method. However, the components would not be subjected to any further working operation for completion into the finished stage". It is an admitted position that this amendment was not there and therefore, the complexity of the assembly method would have to be taken into consideration atleast in case of the present goods since the concerned period is pre 1997 period. The Tribunal has correctly held that the HSN Explanatory Notes to Rule 2 (a) had to be applied while considering the relevant Tariff Entry. It has also correctly held after considering the whole process that the process involved in the user of the components is the complex manufacturing process during which many components are subjected to working operation

requiring sophisticated machinery and skilled operators. Further it has correctly assessed the effect of the amendment of HSN Explanatory Notes which came on 14.3.1997. We approve of the finding given by the Tribunal in para 25 of its order which takes into account the fact that there was no amendment to Clause (v) while this is amended to the effect that complexity of the assembly method was made irrelevant. However, it was made clear that the components would not be subjected to any further working operation for completion in the finished state. The Tribunal has referred in details to the manufacturing process to show that some of the components require further working operation for completing the manufacturing process and further that CTV is not a machine which is presented in assembly for the sake of convenience of packing, handling or transport. We are, therefore, in agreement with the finding that even applying the amended HSN Explanatory Notes the position would be no different.

16. Our attention was invited to a very interesting decision reported in Modi Xerox Ltd. v. CCE, New Delhi (1998 (103) ELT 109] which was confirmed by this Court in 2001 (ELT) A 91 (it must be noted that the decisions in Woodcraft Products is specifically confirmed in this decision). In this case, the Tribunal had relied on Tara Chand's case as also the CC v. Mitsuny Electronics Works [1987 (13) ELT 345 (Cal. HC)] which we have made reference in the earlier part of this judgment.
The Tribunal had held that the fax machine in completely knocked down condition imported by the appellant being not a fax machine but part thereof, the benefit of exemption under notification No.59/88/Cus. Dated 1.3.1988 would not be available. Very interestingly, it was claimed by the importer that it had imported the fax machine and not the components obviously because the duty payable on the components was more. The Tribunal came to the conclusion that in view of Section Note 2 to Section XVI Rule 2(a) would not apply and confirmed the import of goods as components. While interpreting Explanatory Note to Rule 2(a), the Tribunal had held that this Rule would apply only when the imported articles presented in unassembled or disassembled can be put together by means of simple fixing device or riveting or welding. It came to the conclusion that fax machines were not the type of goods which were normally traded or transported in knocked down condition and therefore, the imports were that of the components and not of fax machines. Shri Lakshmikumaran also invites our attention to the fact that Chapter 64 dealing with footwear does not have a note similar to Note 2 in Section XVI. Thus this position would render support to the proposition that Rule 2(a) would apply only when the imported articles presented unassembled or disassembled can be put together by means of simple fixing device or by riveting or welding. We have already pointed out in the earlier part of our judgment that the complicated process would be required for the user of those parts.

17. Lastly, we must take stock of the argument of Shri Lakshmikumaran that Section Interpretative Rule 2(a) would not be applicable at all in this case. For this he invited our attention to Rule 1 of Interpretative Rules as also to the decision in Simplex Mills v. Union of India [2005 (181) ELT 345 (SC)] wherein this Court had held in para 11 as under:

"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 sector 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-I 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."

Relying on this the further contention of the counsel is that Section Note 2 of Section XVI provides mandate for classification of the parts of machines falling under Section XVI. In terms of Rule 1 of Interpretative Rules, invocation of Rule 2(a) for certain categories of goods covered in Section XVI like the goods of CTVs are prohibited. For this the learned counsel relied on the decision in Modi Xerox (supra). In that view the learned counsel says that Rule 2(a) would not be applicable at all. This question needs no consideration here particularly in view of the interpretation that we have given to Rule 2 (a). On facts, we have already found that Rule 2(a) would not be applicable to the present case since there is no question of the goods having the essential character of CTVs. In that view, the question of applicability of Section 2(a) on this account need not be gone into in this judgment.

18. We also approve of the reliance by the Tribunal on the reported decision in Susha Electronics Industries v. CC [1989 (39) ELT 585], Trident Television Pvt. Ltd. v. CC [(1990) 45 ELT 24], Vishal Electronics Pvt. Ltd. v. CC, Bombay [1998 (102 ELT 188], SharpBusiness Machines (supra) and the judgment of the Calcutta High Court in HCL Ltd. (supra).

19. Accordingly, we are of the clear opinion that the Tribunal's judgment needs no interference. We accordingly confirm the same and dismiss the present appeal. In view of the important question of interpretation involved in the matter, we do not propose to inflict any costs.