SUPREME COURT OF INDIA

Salora International Ltd.

Vs.

Commissioner of Central Excise, New Delhi

C.A.No.4427 of 2003

(D.K.Jain and Anil R.Dave,JJ.)

07.09.2012

JUDGMENT

Anil R.Dave,J.

1. The challenge in this appeal is to an order dated 1st April, 2003 passed by the Customs, Excise and Gold (Control) Appellate Tribunal at New Delhi (in short 'The Tribunal') in E/APPEAL No. 1553/02-B whereby the Tribunal has dismissed the appeal filed by the appellant herein and upheld the Order-in-Appeal passed by the Commissioner (Appeals).

2. The issue under consideration in this appeal is whether the goods manufactured by the appellant are liable to be taxed as 'Parts of Television Receivers' falling under Tariff Entry 8529 of the Central Excise Tariff contained in the First Schedule to the Central Excise Tariff Act, 1985 (in short 'the Tariff) or as 'Television Receivers' under Tariff Entry 8528 of the Tariff, for the year 1989-90.

3. The appellant is a manufacturer of various components of television sets. The components are manufactured at its factory at Delhi. Thereafter, the said components are assembled in the same factory for the purpose of testing of each component and for checking the working of each television set. Thereafter the television sets so assembled are disassembled and then transported as parts to various satellite units of the appellant company at different places. In these satellite units, the separate components are re-assembled and, as per the appellant, some further processes are carried out in order to make those sets marketable. The issue is whether such components, which are manufactured at and transported from the factory of the appellant at Delhi are liable to be assessed as 'Television Receivers' or as 'Parts of Television Receivers'.

4. The appellant was issued a show-cause notice dated 21.3.1990 by the Assistant Collector, New Delhi, whereby it was asked to show-cause as to why the goods manufactured by the appellant were not liable to be classified under sub-heading 8528.0 of the Tariff as

'Television Receivers', rather than under Entry 8529.00, as 'parts' of the same. The appellant replied to the show-cause notice that the goods/components as transported from its factory did not possess the essential characteristics of finished Television Receivers as required by Rule 2(a) of the Rules for Interpretation of the Tariff (in short the 'Rules for Interpretation'), and also detailed the various further processes required to be performed on those goods for them to be considered as complete Television Receivers. These contentions of the appellant appear to have been accepted as no further action was taken by the Revenue until the year 1993.

5. Thereafter, the Collector of Central Excise, exercising his power under Section 35E(2) of the Central Excise and Salt Act, 1944 vide order dated 18.02.1994 directed the Assistant-Collector to file an appeal before the Collector, Central Excise (Appeals) for setting aside the approval granted to the classification of the goods of the appellant. The Collector (Appeals) by order dated 21/22.07.1994 dismissed the appeal filed by the Department.

6. Against the foretasted order, the Department preferred an appeal before the Tribunal. The Tribunal by its order dated 18.02.2000 remanded the matter to the Collector (Appeals), on finding that the earlier order of the Collector (Appeals) was a non-speaking order and violative of the principles of natural justice. Consequently, the Collector (Appeals) in the remand proceedings decided the issue in favour of the Department vide order dated 26.06.2002. Against this, the appellant filed an appeal before the Tribunal, wherein the order impugned herein was passed. By the impugned order, the Tribunal has accepted the contentions of the Department and held the goods manufactured by the appellant liable to be classified under Tariff Entry 8528 as 'Television Receivers' rather than under Tariff Entry 8529 as 'parts' thereof.

7. At the outset, recourse may be had to the respective Tariff Entries during the relevant period:

> "8528.00 - Television Receivers (including video monitors and video projectors), whether or not incorporating radio broadcast receivers or sound or video recording or reproducing apparatus.8529.0- Parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28."

8. Rules 12 of the Rules for the Interpretation of Excise Tariff framed under Section 2 of the Act read as under:

> "1. The titles of Sections and 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 provisions hereinafter contained.

2.(a) Any reference in a heading to goods shall be taken to include a reference to those goods incomplete or unfinished, provided that, the incomplete or unfinished goods have the essential character of the complete or finished goods. It shall also be taken to include a reference to those goods complete or finished (or falling to be classified as complete or finished by virtue of this rule), removed unassembled or disassembled."

9. Mr. Dushyant Dave, learned senior counsel appearing for the appellant contended that the aforestated Rules of the Rules for Interpretation may not be taken recourse to in the instant case, as there exists a clear stipulation to the contrary in the Section Notes to Section XVI of the Tariff, where the headings involved herein are located. Note 2 of the Section Notes to Section XVI is as follows:

"2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading No. 84.84, 85.44, 85.45, 85.46 or 85.47) are to be classified according to the following rules :

a. parts which are goods included in any of the headings of Chapter 84 or Chapter 85 (other than headings 84.85 and 85.48) are in all cases to be classified in their respective headings;"

10. He further submitted that the classification of the goods manufactured by the appellant was not correct. According to him, as per the sound principle of classification and more particularly as per the provisions of interpretative Rule 1, the goods ought to have been classified under Tariff Entry 8529 because the appellant had manufactured only parts of Television Receivers. He submitted that invocation of Rule 2(a) of the Rules for Interpretation was not justified because looking to the facts of the case, the provisions of Rule 1 of the Rules for Interpretation would apply because of the specific head for 'parts of Television Receiver', being Tariff Head 8529.00.

11. The learned senior counsel cited the decision of this Court in *Commissioner of Customs Vs. M/S Sony India Ltd*[1], wherein a case involving analogous headings as those in this case in the Schedule to the Customs Tariff Act, the goods imported by the assessee therein were held to be 'parts of Television Receivers', and further interpretative Rule 2(a) was held to be inapplicable to such goods. He further contended that as the goods transported by the appellant were substantially in the same position and condition as those transported by the assessee in the above case, the ratio in the said decision would be applicable to this case also.

12. In the written submissions submitted on behalf of the appellant, it was stated that keeping in mind the law laid down by this *Court in Union of India vs. Tara Chand Gupta*[2], the goods manufactured by the appellant ought to have been classified under Tariff Entry 8529.00 and an effort was made to compare the facts of the said case with the present one by submitting that in the case referred to hereinabove, parts of scooter, in completely knocked down condition, were treated as parts of the scooter and not scooter itself.

13. He further submitted that the Rule 1 of the Rules for Interpretation clearly denotes that the title of Sections and Chapters are provided for ease of reference only but for legal purposes, the classification should be determined according to the terms of the headings, and as the appellant had manufactured only parts of Television Receivers, the Revenue ought not to have classified the goods manufactured by the appellant as 'Television Receivers' under a different head instead of as 'parts' of the same.

14. In addition to these contentions, he also contended that if the goods manufactured by it are held to be Television Receivers covered by Tariff Entry 8528 mentioned above, it would lead to double-taxation as the satellite units, where such goods are finally assembled into Television Receivers, are in fact paying excise duty on the assembled goods under the above Tariff Entry 8528.

15. On the other hand, on behalf of the revenue, Mr. P.P. Malhotra, learned Additional Solicitor General justified the judgment delivered by the Tribunal. He tried to narrate the facts which lead the Revenue to classify the goods manufactured by the appellant as complete television for the reasons, some of which are as follows:

> "a. The appellant was assembling manufactured parts of TV sets and operating TV sets so as to check whether the entire set was complete and operative and then the TV sets were being disassembled;
>
> b. The appellant was giving the same serial number on the chassis as well as the sub assemblies of the TV sets;
>
> c. The matching of the said chassis and sub-assemblies was done at the factory of the appellant itself;
>
> d. The packing material and literature were supplied by the appellant along with the disassembled parts."

16. He further contended that the goods produced and temporarily assembled by the appellant, being essentially/substantially complete Television Receivers in a disassembled state, would necessarily have to be classified as such, owing to Rule 2(a) of the Rules for

Interpretation. It was a simple contention of the Revenue that the appellant had chosen to disassemble the television sets as parts before transporting them in order to avail the lower duty payable on such parts.

17. We have heard the learned counsel and considered the facts of the case. We have also gone through the judgments cited by the learned counsel and upon doing so, we are of the view that the Tribunal did not commit any error while passing the impugned order.

18. The main question that arises for consideration in this case is that of the applicability or otherwise of Rule 2(a) of the Rules for Interpretation to the goods of the Appellant, and the effect of Section Note 2 to Section XVI of the Tariff, reproduced above, on the applicability of such provision.

19. On the question of the applicability of the Rules for Interpretation vis-à- vis the Section Notes and Chapter Notes in the Tariff Schedule, the rule laid down by this Court in *Commissioner of Central Excise, Nagpur Vs. Simplex Mills Co. Ltd*[3] may be seen to be applicable in this case. In that decision, a three judge bench had the following to say on the subject:

> "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-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."

20. Therefore, as clearly specified by the above rule, resort must first be had only to the particular tariff entries, along with the relevant Section and Chapter Notes, to see whether a clear picture emerges. It is only in the absence of such a picture emerging, that recourse can be made to the Rules for Interpretation.

21. In the matter at hand, the entire case of the Revenue is based on an application of Rule 2(a) of the Rules for Interpretation to the goods produced by the appellant, however, the applicability of this Rule cannot be established unless the classification is first tested against the relevant Section and Chapter Notes. In this case, the relevant Section Note is Section

Note 2 to Section XVI of the Tariff, as reproduced above. The same may be reproduced again here for the purpose of a closer examination:

> "2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 84.84, 85.44, 85.45, 85.46 or 85.47) are to be classified according to the following rules : a.parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 84.85 and 85.48) are in all cases to be classified in their respective headings;..." [Emphasis added]

22. As can be seen from the above, the clear stipulation contained in Section Note 2 is to the effect that 'parts' of goods mentioned in the Chapters specified therein, shall in all cases be classified in their respective heading. In that light, the fundamental enquiry in this case must be that of whether the goods produced by the appellant may be said to be covered by the above Section Note.

23. In view of the above mentioned Section Note, the question that arises here is whether the goods produced by the appellant can be described as 'parts' under the goods included in any of the headings of Chapter 84 or 85. In this respect, it is the contention of the appellant that the goods produced by them shall inevitably have to be considered as 'parts', as they are unable to receive a picture, which is said to be a fundamental requirement for a good to be considered as a 'Television Receiver'. At the first sight, one may find force in this contention. As the test in Section Note 2 is simply that of whether the goods in question are 'parts', it may be convincingly said that as the goods transported by the appellant are incapable of functioning as 'Television Receivers', they shall have to be considered to be 'parts' thereof.

24. However, on closer scrutiny of the unique facts of this case, it is our view, the goods of the appellant may not be said to be 'parts' as per Section Note 2 to Section XVI of the Tariff. The appellant not only used to assemble all parts of the Television Receivers and make complete television sets, but the said Television Receivers were also operated in the manufacturing unit of the appellant and thoroughly checked and only upon it being confirmed that the Television Receivers were complete in all respects, they were disassembled and along with relevant material and individual serial numbers, sent to the various satellite units. Once the Television Receivers are assembled or are made completely finished goods, the manufacturing process is over and we are not concerned as to what happens subsequently. Whether they are sent to the satellite units of the appellant in its complete form or in a disassembled form is irrelevant.

25. Looking to the facts of the case, it is not in dispute that complete Television was manufactured by the appellant and therefore, in our opinion, the Revenue had rightly classified the goods- product as complete Television set even though it was subsequently disassembled.

26. It is seen from the material on record, that at the time of the parts of the TV set being transported from the factory of the appellant, the parts manufactured by it are already identified as distinct units. As it can be seen from the affidavit of the Revenue, which has not been controverted by the appellant, the parts manufactured by it are matched and numbered within the factory itself, and also assembled together to receive pictures for the purpose of testing and quality control. The consequence of this is that the goods assembled at the satellite units would be identifiably the same as those assembled together by the appellant in its factory for the purpose of testing, as all such parts are already numbered and matched. This element of identifiability shall take the goods manufactured by the appellant away from being classified as 'parts', and they will be classified as identifiable Television Receivers. The fact that the packing material for the products is also manufactured and transported by the appellant further lends credence to this conclusion.

27. The facts in the case of Sony India Ltd. (supra) may be distinguished in this respect. In that case, the assessee had imported different parts of television sets in 94 different consignments. The said parts were imported separately in bulk, and thereafter, the process of matching, numbering and assembling was carried out once they were in the possession of the assessee. Therefore, it may be seen that what the assessee had imported in that case were merely various parts which could not yet be identified and distinguished as individual Television Receivers such as the parts transported by the appellant in this case. The said decision is, therefore, distinguishable on facts.

28. For further clarification, it may also be stated that if the appellant had been in the practice of simply manufacturing and transporting parts of Television Receivers in bulk, while leaving the matching and numbering functions to be done at the satellite units, then it could have availed the benefit of Section Note 2, because in such a case, there would not have been any production of identifiable television sets such as in the present case.

29. Once the question of applicability of Section Note 2 to Section XVI of the Tariff is answered in the above manner, i.e. in the negative, there may be seen to be no bar to the application of Rule 2 of the Rules for Interpretation to the goods transported by the appellant. Consequently, the only question that remains is with respect to whether such goods shall fall foul of the said Rule.

30. In this regard, despite the attempts of the appellant to establish otherwise, we are unable to see how the goods transported by them shall not be covered by the Rule, especially as a complete or finished article, 'presented unassembled or disassembled'. The terminology of the Rule is wide enough to cover the goods transported by the appellant, and we are not convinced that the processes required to be carried out at the satellite units are so vital to the manufacture of the Television Receivers so as to render the goods transported by the appellant lacking the 'essential character' of Television Receivers. Rule 2(a) of the Rules for Interpretation has been couched in wide terms, and in terms of this Rule, it is our view that the goods produced by the appellant do in fact possess the essential character of Television Receivers.

31. The appellant had also raised the plea of double-taxation; however, in our view once the question of classification of the goods transported by the appellant has been answered in the above manner, it is not open to us to grant the appellant any relief on this ground alone. Further, it is always open to the satellite units of the appellant to avail input tax credit on the duty paid by the appellant on the goods transported by them.

32. In view of the facts stated hereinabove, we are of the view that the Tribunal did not commit any error while passing the impugned order and, therefore, the appeal is dismissed with no order as to costs.

Judgment Referred

[1](2008) 13 SCC 0145
[2](1971) 1 SCC 0486
[3](2005) 3 SCC 0051