

Jain Engineering Co vs Collector Of Customs, Bombay on 18 September, 1987

Equivalent citations: 1987 AIR 2279, 1988 SCR (1) 220, AIR 1987 SUPREME COURT 2279, 1987 (4) SCC 492, 1987 4 JT 596, (1987) 3 JT 596 (SC), (1987) 14 ECC 141, (1987) 13 ECR 273, (1987) 32 ELT 3

Author: M.M. Dutt

Bench: M.M. Dutt, Misra Rangnath

PETITIONER:
JAIN ENGINEERING CO.

Vs.

RESPONDENT:
COLLECTOR OF CUSTOMS, BOMBAY

DATE OF JUDGMENT 18/09/1987

BENCH:
DUTT, M.M. (J)
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DUTT, M.M. (J)
MISRA RANGNATH

CITATION:
1987 AIR 2279 1988 SCR (1) 220
1987 SCC (4) 492 JT 1987 (3) 596
1987 SCALE (2) 584

ACT:
Customs Tariff Act, 1975: First Schedule, Headings Nos. 84.06 and 84.63-Rod bushes and camshaft bushes-Exemption from customs duty-Effect of Notification No. 281/Cus/76 dated 2.8.197 Parts of internal combustion piston engines-Whether included.

HEADNOTE:
Heading No. 84.06 of the Customs Tariff Act, 1975 prescribed 100% duty on internal combustion piston engines, while Heading No. 84.63 laid down 60% duty on transmission shafts, cranks, bearing housings, plan shaft bearing etc. The Notification No. 281-Cus/76 dated 2nd August, 1976 as amended from time to time exempted the articles specified in

column (2) of the table thereto and falling under Heading No. 84.06 from payment of duty in excess of 40% ad valorem. Internal combustion piston engines and parts thereof were one such article.

The appellant sought part exemption from payment of customs duty in respect of rod bushes and camshaft bushes, imported by it, in terms of the Notification. The Assistant Collector and the Collector of Customs (Judicial) found that he was not entitled to the benefit of exemption under the said Notification. The Appellate Tribunal affirmed the orders of the Customs authorities being of the view that the bushes and bearings were the same and as the bearings come under the Heading No. 84.63 and not under Heading No. 84.06, they were not entitled to the benefit of exemption.

In this appeal under s. 130E of the Customs Act, 1962 it was contended for the respondent that as Heading No. 84.06 does not refer to the parts of internal combustion piston engines, the appellant was not entitled to claim any exemption for the bushes, even if they were parts of such engines, 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, and that bushes and bearings were 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 did not arise, that there is no material for holding that the bushes, which have been imported by the

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appellant, were parts of the engines referred to in Heading No. 84.06.

Allowing the appeal,

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HELD: 1.1 The Notification No. 281/Cus/76 dated August 2, 1976, as amended from time to time will apply to parts of the internal combustion piston engines mentioned under Heading No. 84.06. [225G]

1.2 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'. Such parts may be all the parts or any or some of the parts of the engine or engines in question. Although the parts are not mentioned under Heading No. 84.06, by necessary implicated and in the context of the Notification, it includes the parts of the engine. [225D-F]

2. Bushes and bearings are not same and identical. As the functions of bushes are the same as that of the bearings sometimes bushes are also called bearings. These two articles are distinct and separate. They are known in the market by two different names. [226A-B]

3.1 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 mentioned in

Heading No. 84.06. As soon as that is proved such parts will get the benefit irrespective of the fact that they or any or some of them have already been included under Heading No. 84.063 or under any other heading. [226C-D]

3.2 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. Therefore, even if bushes are same as bearings, still they would come within the purview of the Notification, provided they are parts of the engines mentioned under Heading No. 84.06.[226F]

3.3 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. The case is, therefore, sent back to the Collector of Customs to decide, after giving an opportunity to the appellant, whether the bushes imported by the appellant are really parts of the internal combustion piston engines, as mentioned under Heading No. 84.06. [226G; 227A-B]

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JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 335 of 1987.

From the order dated 10.12.1986 of the Customs Excise and Gold Control Appellate Tribunal, New Delhi in Appeal No. C/1080/ 86-B-2(OrderNo. 1284/86-B-2).

S.K. Dholakia, R.C. Bhatia, P.C. Kapur and S.K. Beri for the Appellant.

G. Ramaswamy, Additional Solicitor General, B. Parthasarthy and Mrs. S. Suri for the Respondents.

The judgement of the court was delivered by DUTT, J. The only question that is involved in this appeal preferred under section 130E 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.

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 Rate of duty Central No. description of article

(a)Standard Excise

(b)Preferen- Tariff tial areas Item 84.06 International combustion (a)100% 29 piston engines.

84.63 Transmission shafts, (a) 60% cranks, bearing housings, plan shaft bearings, gears and gearing (including friction gears and gear-boxes and other variable speed gears), flywheels, pulleys and pulley blocks, clutches and shaft couplings.

The said Notification No. 281-Cus dated 2.8 1976, as amended A from time to time, reads as follows:-

"Notfn. No. 281.Cus.-The articles specified in column(2) of the Table hereto annexed and falling under Heading No. 84.06 are exempt from 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
(2)

Rate of duty
(3)

Stationary or industrial internal combustion piston engines and parts thereof ad valorem. excluding those which are inter-changeable for use with motor vehicle other than those specified against S. No 2 International combustion piston engines 40 per cent. for industrial and agricultural tractors ad valorem. and power tillers and parts thereof excluding those which are inter-changeable for use with other motor vehicles Marine engines and parts thereof excluding 40 per cent. those which are inter-changeable for use ad valorem. with motor vehicles other than those specified against Sl. No. 2.

International combustion piston engines 3 per cent. designed for use in aeroplanes and parts ad valorem of such engines.

International combustion piston engines 40 per cent. for locomotives and parts thereof excluding ad valorem. those which are inter-changeable for use with motor vehicles other than those specified against Sl. No. 2."

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. 281Cus/76. The Customs, Excise and Gold (Control) Appellant 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.

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. 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 indistinguishable 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.

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.

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 parts 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 Table may be all the parts or any of some of the parts 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.

It 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 R Customs authorities that bushings and bearings are same and identical.

In view of our finding 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. 84.63. 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. 84.06 or under any other Heading. Therefore, even if bushings are the same as bearings, still they would come within the purview 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, 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.

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.

For the reasons aforesaid, we set aside the order of the Appellate A 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.

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

P.S.S.

Appeal allowed.