

Supreme Court of India

Collector Of Customs, Bombay And ... vs Kirloskar Cummins Ltd. And Ors. on 28 November, 1996

Equivalent citations: 1997 (93) ELT 328 SC, 1997 (95) ELT 143 SC, 1998 (98) ELT 141 SC, JT 1998 (7) SC 543, (1998) 9 SCC 145

Bench: A Ahmadi, S V Manohar

ORDER

1. The short question involved in the present appeals is whether parts such as pistons, gaskets, etc. are assessable to C.V. duty under the old Tariff Entry 34-A as is contended by the Revenue or they fall within the residuary Entry 68 as is urged by the assesseees. The assesseees' contention has been upheld by the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter called "the Tribunal") by the decisions impugned in these appeals. The assesseees had applied for refund of C.V. duty charged from them on the ground that the goods having been classified as parts of internal combustion engines for the purposes of basic customs duty, they could not be charged to C.V. duty under Item 34-A which referred to parts of motor vehicles. The contention of the assesseees having been upheld by the Tribunal, the Revenue has come in appeal before us.

2. The learned Additional Solicitor General invited our attention to the old Entry 34-A which refers to parts and accessories not elsewhere specified, and motor vehicles and tractors including trailers. The Tribunal has come to the conclusion that parts such as pistons, gaskets, etc. of internal combustion engines do not fall within the language of Entry 34-A and there being no other specific entry, the residuary Entry 68 was attracted. The Tribunal went by the predominant user test in reaching the conclusion that Entry 34-A was not attracted. This has been the consistent view of the Tribunal as can be seen from the orders passed in various matters from time to time. The learned counsel for the assesseees supported the view taken by the Tribunal.

3. After hearing learned counsel for the Revenue as well as the assesseees, we are of the view that the conclusion reached by the Tribunal cannot be said to be ill-founded. Having given our careful consideration to the submissions made by both the learned counsel for the Revenue and the assesseees, we are of the view that the decision taken by the Tribunal does not call for interference by us. We, therefore, dismiss these appeals on merits but make no order as to costs.

4. So far as the question of refund is concerned, it will have to be decided in the light of the decision that this Court may take on the issue of unjust enrichment and the law enacted in that behalf by the Central Government.