

Supreme Court of India

Delhi Electric Supply ... vs Collector Of Customs on 11 December, 1996

Equivalent citations: 1997 (91) ELT 259 SC, (1997) 11 SCC 306

Author: S Bharucha

Bench: S Bharucha, S Sen

JUDGMENT S.P. Bharucha, J.

1. The articles in question are described by the appellant thus :

The Flexible Tubes work inside the furnace which are subject to high temperature and pressure of fuel oil (Max. 40 Kg/Cm). The burners are fitted at the corner of the boilers and are required to work in different angles so as to maintain proper firing conditions in the boiler. Hence the Flexible House (Tubes) have been provided so that at the time of tilting the burners no difficulty is experienced and that Flexible Tubes should also withstand high temperature and pressure. These are proprietary items of M/s. Mitsubishi Corporation who have supplied these boilers to us. Technically 2 different diameters of flexible tubes or bellows."

"This Flexible Tube Assembly mainly consists of two different diameters of Flexible tube or bellows made out of stainless steel 304 and 316. These flexible bellows have been fitted in sleeve of special steel which can withstand high temperature of furnace. This sleeve is further protected with double braided stainless steel wire braidings.

2. The Customs, Excise and Gold (Control) Appellate Tribunal, in the order under challenge, upheld the contention of the Revenue that the goods fell within the Customs Tariff Heading 83.01/15 which, as it then stood, read thus :

----- Heading Sub-heading No. and
description of Standard Central No. article rd rate of Excise duty Tariff Item
----- 83.01/15 Miscellaneous articles of
base metal: Safes, strong-boxes, strong-rooms 1000% 41, 48 (including linings and doors thereof);
and 42 cash and deed boxes and the like; office equipment (for example, filing, cabinets, racks,
sorting boxes, paper trays and paper rests) other than office furniture falling within Chapter 94;
fittings for loose leaf binders, for files or for stationery books, letter clips, staples, indexing tags and
similar stationery goods; statuettes and other ornaments of a kind used in doors; flexible tubing and
piping; beads and spangles; bells and gongs, non-electrical and parts thereof, stoppers, crown corks
bottle caps capsules, bung covers, seals and plombs, case corner protectors and other packing
accessories. -----

[Emphasis supplied.]

3. The Tribunal rejected the case of the assessee that the goods fell under Heading 84.01 /02 which, as it then stood, read thus :

----- Heading Sub-heading No. and
description Standard Central No. of article rate of duty Excise Tariff Item
----- 84.01/02 Steam and other vapour
40% generating boilers (excluding central heating hot water boilers capable also of producing low
pressure steam superheated water boilers; auxiliary plant for use with such boilers (for example,
economisers, superheaters, soot removers, gas recoveries and the like), condensers for vapour
engines and power units. -----

4. The Tribunal relied upon an earlier judgment delivered by it on 15th April, [1986], in the case of Nav Bharat Corporation, Bombay v. Collector of Customs, Bombay, where, in respect of similar goods, it was held, after traversing all the headings of the Tariff, that Heading 83.01/15(2), wherein flexible tubing and piping was specifically mentioned, was the most appropriate heading.

5. Learned Counsel for the assessee submitted that Chapter 84 covered boilers, machinery and mechanical appliances and the parts thereof. The goods were parts of the auxiliary plant for use with steam and other vapour generating boilers mentioned in Heading 84.01 /2 and, therefore, were covered there by. He submitted that Heading 83.01/15 was a miscellaneous entry covering miscellaneous articles of base metal of a variety that ranged from safes, fittings for loose leaf binders, equipment for doors, spangles, bottle caps and the like. The goods in question were specialised equipment and not flexible tubing or piping of the miscellaneous variety mentioned under this Heading.

6. We are not inclined to agree. We think that the Tribunal was justified in taking note of the fact that flexible tubing and piping, which is what these goods are, was specifically mentioned in Heading 83.01/15 and in upholding the Revenue's contention that they should be classified there under. Chapter 83 provides for certain exclusions, but the exclusion that would be requisite here is not stated.

7. In the result, the appeal is dismissed, with no order as to costs.