

Supreme Court of India

M/S. Ballarpur Industries Ltd vs The Collector Of Customes ... on 14 December, 1994

Equivalent citations: 1995 SCC, Supl. (1) 446 JT 1995 (1) 164

Author: V N.

Bench: Venkatachala N. (J)

PETITIONER:

M/S. BALLARPUR INDUSTRIES LTD.

Vs.

RESPONDENT:

THE COLLECTOR OF CUSTOMES (APPEALS), CUSTOMS HOUSE, MADRAS.

DATE OF JUDGMENT 14/12/1994

BENCH:

VENKATACHALA N. (J)

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VENKATACHALA N. (J)

SAHAI, R.M. (J)

CITATION:

1995 SCC Supl. (1) 446 JT 1995 (1) 164

1994 SCALE (5) 263

ACT:

HEADNOTE:

JUDGMENT:

VENKATACHALA, J.:

1. This appeal under Section 130-E of the Customs Act, 1962 is directed against the order No.234/1986-B.2 rendered on 10th April, 1986 by the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi -- "the CEGAT", in CD(SB)(T) Appeal No. 1933 of 1983 (B-2).

2. Whether there was justification for the CEGAT to classify the article "Granite Press Roll" under Import Tariff Item No. 68.01/16(1) of the Ist Schedule to the Customs Tariff Act, 1975 as it stood prior to its amendment on 28_2. 1986, as against its classification made by the Collector (Appeals) under Import Tariff Item No. 84.31 thereof, is 'the question which needs our consideration and decision in this appeal.

3. The appellant, a Company incorporated under the Companies Act, 1913, has two paper manufacturing Units in India. As 'Granite Press Roll', which was required by the appellant to be used as a part of the machinery in one of its paper manufacturing Units, was not indigenously made, the same was imported from United Kingdom by the appellant for such use. The Granite Press Roll, so imported, is goods or article which could be described thus:

Roll of 138" length and 22" diameter with raised spigots, fitted by mild steel shafts which are secured in position by means of mild steel end-plates hand-fitted to the spigots with mild steel nuts, the 3/8" cavity between the steel shaft and the granite shell, having been filled with concrete and the granite shell being of 7.18/8" thickness and the mild steel shall 7" thickness. Thus, it is a part of machine made of parts of articles like Granite, Steel and concrete.

4. Whatever be the description of the goods or article, the Granite Press Roll, it is found by the CEGAT to be "a component part of paper finishing machinery", its function being to give final finish or polish to paper.

5. However, by its order under appeal, the CEGAT has classified the said article, 'Granite Press Roll' under Import Tariff Item No. 68.01/16(1) as against its classification made by the Collector (Appeals) under Import Tariff Item No. 84.31.

6. Was the said change of classification of the article

- 'Granite Press Roll' made by the CEGAT, uncalled for, as was argued on behalf of the appellant by Ms. Indu Malhotra, is the question which, now requires, our consideration.

7. As a proper consideration of the said question becomes possible by reference to the relevant provisions in the 1st Schedule to the Customs Tariff Act, 1975, it would be advantageous to excerpt them at the out-set :-

"SECTION XIII ARTICLES OF STONE, OF PLASTER, OF CEMENT, OF ASBESTOS, OF MICA AND OF SIMILAR MATERIALS; CERAMIC PRODUCTS; GLASS AND GLASSWARE. CHAPTER 68;

ARTICLES OF STONE, OF PLASTER, OF CEMENT, OF ASBESTOS.. OF MICA AND OF SIMILAR MATERIALS.

This Chapter does not cover:

(a)

(n)

----- Heading Sub-heading No. Rate of duty Central
No. and description (a) Standard Excise of article (b) Preferential Tariff areas Item.

68.01/16 (ii)	Articles of natural or artificial stones, of agglomerated natural or artificial abrasives, of plastering material of cement or concrete of asbestos, of asbestoscement or cellulose fibre cement or of mica; articles of vegetable materials agglomerated with mineral binders mineral wools; expanded mineral materials; articles of other mineral substances, not elsewhere specified or included; (1) Not elsewhere (a) 100% specified (2) Grinding stones, (b) 40% grinding wheels and the like of natural stone, of agglomerated natural abrasives, and segments or other finished parts of such stones and wheels but excluding hand polishing stones, whetstones, oil stones, and hones."	22F, 23C, 51.
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"SECTION XVI

MACHINERY AND MECHANICAL APPLIANCES; ELECTRICAL EQUIPMENT; PARTS THEREOF
NOTES

1. This Section does not cover;

(a)! | | |

(o)

2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and Note 1 to Chapter 85, parts of machines not being parts of the articles described in Heading No. 84.64 or parts of the following articles falling within Heading No. 85.18/27 namely (i) insulators or insulated electric wire and the like (ii) carbon articles used for electrical purposes, or

(iii) electrical conduit tubing and joints therefor are to be classified according to the following rules:

(a) goods of a kind described in any of the Headings of Chapter 84 and 85 (other than Heading Nos. 84.65 and 85.28) are in all cases to be classified in their respective Headings;

(b) other parts if suitable for use solely or principally with a particular kind of machine, or with a number of machines falling within the same Heading (including a machine falling within Heading No. 84.59 or electrical goods and apparatus falling within Heading no. 85.18/27) are to be classified with the machines of that kind. However, goods which are equally suitable for use principally with the goods of Heading Nos. 85.13 and 85.15 are to be classified in Heading No. 85.13;

(c) all other parts are to be classified in Heading No. 84.65 or 85.13;

" CHAPTER 84 BOILERS, MACHINERY AND MECHANICAL APPLIANCES; PARTS THEREOF NOTES

1. This Chapter does not cover;

(a) millstones, grindstones articles falling within Chapter 68;

(b)

|||

(e)

2.

||||

5.

Heading No.	Sub-heading No. and description articles	Rate of duty (a) Standard Tariff areas	Central Excise Item.
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----- 84.01/02

| | 84.31 Machinery for making (a) 40% or finishing cellulosic pulp, paper or paper-board | |
....."

----- CHAPTER 85 ELECTRICAL MACHINERY AND
EQUIPMENT; PARTS THEREOF" NOTES

1. This Chapter does not cover;

(a)"

(underlining is ours)

8. No doubt, CEGAT has reached the conclusion that the article - "Granite Press Roll", falls for classification under Chapter 68. The discussion found in CEGAT's order under appeal, that refers to the statutory rules of classification of articles or goods under Tariff items of Customs Act which formed the basis for its conclusion that 'Granite Press Roll' has to be classified as an article under Chapter 68, runs "4. We have carefully considered the rival submissions. We observe that heading 84.31 is specific for paper making/finishing machinery but not for parts of such machinery. The respondents have not imported paper making/finishing machinery but only a part of such machinery. There is no immutable rule in the Customs Tariff that all parts of a machine must be assessed under the heading for the machine. On the contrary, statutory Notes 1 and 2 in section XVI, Note 1 in Chapter 84 and Note 1 in Chapter 85, which have an over-riding effect over the headings themselves, lay down in general the order of priority or classification of parts in the following sequence :-

(1) Parts made of certain materials like mineral products, glass, ceramics, plastics etc. and parts of general use made of base metals are to be classified in the respective material composition heading.

(2) Subject to (1) above, parts having a specific heading for themselves in Chapters 84 & 85 are to be classified under that heading.

(3) Other parts, if suitable for use solely or principally with a particular kind of machine are to be classified within the heading of that machine.

(4) All other parts are to be classified in heading No. 84.65 or 85.28."

5. The respondents are canvassing for the course at (3) above. But that is permissible only if the prior options at (1) and (2) above are not available. No heading which is specific for Granite Press Rolls, or for that matter for parts of paper making/ finishing machinery, has been shown to exist in the Tariff. The course at (2) above is, therefore, not available. The respondents argue that the course at (1) is also not available because the goods are not made of stone alone but are a composite product of stone and steel. We find that the Rules for the interpretation of the Customs Tariff Schedule, which are statutory, do not permit exclusion of the course at (1) above merely on that ground. We reproduce below the relevant Rules :- "2(a)"

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles contained in rule

3.

3. When for any reason, goods are, *prima facie*, classifiable under two or more Headings, classification shall be effected as follows:

(a) The Heading which provides that most specific description shall be preferred to Headings providing a more general description.

(b) Mixtures and composite goods which consist of different materials or are made up of different components and which cannot be classified by reference to (a) shall be classified as if they consisted of the material or component which gives the goods their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the Heading which occurs latest among those which equally merit consideration."

6. As already stated in the preceding paragraph, there is no specific description heading for Granite Press Rolls or even for parts of paper making/finishing machinery in general. Rule 3(a), therefore, does not apply. The next course is to determine classification in terms of Rule 3(b) read with Rule 2(b). Now, in the Granite Press Roll, the functional part is the roll made out of granite stone. It is this part which imparts final finish to paper. The centre shaft and end plates only provide support to the roll and enable its fitment in the paper finishing machinery. The very name of the article "Granite Press Roll" is also suggestive of the fact that it is the stone part which is the major and the important component. We have, therefore, no hesitation in saying that it is the stone component which gives the goods their essential character. As such, applying Rules 2(b) and 3(b), the goods fall for classification in Chapter 68 and by virtue of Note 1(a) to Chapter 84 they stand excluded from that Chapter."

9. As is seen from Preamble to the above discussion in para 4 of the order of CEGAT, what has made it (CEGAT) not to classify 'Granite Press Roll', machinery part of paper making or finishing, the imported article or goods under Heading No. 84.31 in Chapter 84, is its view that there were contrary rules in statutory Notes 1 and 2 in Section XVI, Note 1 in Chapter 84 and Note 1 in Chapter 85 which had the over-riding effect on the Headings themselves. Such contrary rules which according to it had the over-riding effect over the Headings themselves are those specified in sequence by it in para 4 of the discussion itself as rules 1 to 4. Again, as seen from the discussion in para 5 of the order, CEGAT has found rules for the interpretation of Customs Tariff Schedule being statutory, did not permit exclusion of course at (1) above, that is, rule referred to in para 4 of the order because that rule (1), to wit, "parts made of certain materials like mineral products, glass,

ceramics, plastics etc. and pans of the general use made of these metals", required classification under the respective material composition heading. It is this assumed situation, which has made it (CEGAT) reproduce the rules 2(b) and 3(a),

(b) and (c) requiring classification of materials or substances, or pans of materials like mineral products, glass, plastics etc. and parts of general use made of base metals and apply the same to the classification of machine pan -- 'Granite Press Roll' under consideration, as could be seen from the said discussion itself. Once again, as becomes obvious from its aforesaid discussion at para 5, it is its (CEGAT's) assumption that rule (1) in para 4 relating to materials and substances, given by it is applicable to machine part (part of machinery) in Section XVI, which has made it proceed to hold that 'Granite Press Roll' falls in Chapter 68 by reason of Note 1(a) to Chapter 84.

10. As rightly pointed out on behalf of the, appellant here (respondent before the CEGAT) which was not, rightly, denied on behalf of the respondent here (appellant before the CEGAT) that the rules referred to in the discussion above by the CEGAT at para 4 of its order were rules which were non-existent in statutory Notes 1 and 2 in Section XVI, Note 1 in Chapter 84 and Note 1 in Chapter 85, although the same were assumed to exist. When the basic rules which formed the foundation for CEGAT to reach the conclusion that 'Granite Press Roll' which was admittedly an imported machine-part, was that which fell under Heading No. 68.01/16(1) and not under Heading No. 84.31, arc found not to exist, the reasoning adopted by it in reaching that conclusion also cannot stand. Consequently, we have to hold that CEGAT's conclusion reached in its order under appeal that the imported article 'Granite Press Roll' falls under Tariff item in Chapter 68 is wholly wrong.

11. But, as rightly pointed out by CEGAT itself, the rules which govern .the classification of machine-part like the 'Granite Press Roll' with which we are concerned, ought to be the rules contained in Note 2 of Section XVI under Chapter 84 or Chapter 85, which are already excerpted by us.

12. What, then, cannot be ignored is the requirement of the provision in Note 2 to Section XVI, that subject to Note 1 to Section XVI, Note 1 to Chapter 84 and Note 1 to Chapter 85 parts of machine (not being excepted items) are to be classified according to the rules given thereunder as (a),

(b) and (c). What Note 2 to Section XVI says, in other words, is that machine parts in Section XVI, which are not covered by articles specified in Note 1 to Section XVI, Note 1 to Chapter 84 and Note 1 to Chapter 85, are to be classified according to rules given under Note 2 to Section XVI itself, that is, rules (a), (b) and (c) thereof

13. Coming to Rule (a) of Note 2 to Section XVI, which is also excerpted by us already, goods of a kind described in any of the Headings of Chapters 84 and 85 (other than Heading Nos. 84.65 and 85.28) are in all cases to be classified in their respective Headings. Then, coming to Rule (b) of Note 2 to Section XVI, which is also excerpted by us already, other part of goods of a kind described in any of the Headings of Chapter 84, if suitable for use solely or principally with a particular kind of machine (described in Chapter 84) is required to be classified with machine of that kind mentioned in Chapter 84. Therefore, what has now to be examined is, when Heading No. 84.31 .describes the

goods (article) classified thereunder as "machinery for making or finishing cellulosic pulp, paper or paper-board" whether the goods or article "Granite Press Roll", which is held by CEGAT itself, to be a part or component of paper making machinery, does warrant its classification thereunder. In our view, when Note 2 to Section XVI requires classification of parts of machines to be made according to rules given thereunder and when rule

(a) thereunder requires goods (part of machine) of a kind described in any of the Headings of Chapters 84 and 85 (other than Nos. 84.65 and 85.28) under respective Headings, every machinery for making or finishing cellulosic pulp, paper or paper-board, requires to be classified under Heading 84.31. Then, coming to 'Granite Press Roll' the imported article under consideration, being a part of machine of goods 'Machinery for making or finishing cellulosic pulp, paper or paper-board' which is suitable for use solely or principally as machinery for finishing paper, it requires to be classified with the machine described in the Heading 84.31, as required by rule (b) to Note 2 of Section XVI, inasmuch as, Granite Press Roll is described by CEGAT itself as part of machine of paper making machinery. Therefore, 'Granite Press Roll', the imported article, in our view, warrants its classification under Chapter Heading 84.31, as held by the Collector (Appeals). Thus, when classification of imported article - the Granite Press Roll - ought to have been made under tariff item No. 84.31 of Chapter 84, as is held by us, CEGAT has gone wholly wrong in classifying that article under import tariff item No. 68.01/ 16(1) of the 1st Schedule to the Customs Tariff Act, 1975, particularly when that article could not have been regarded as an article of stone, as such, to become an excepted item under Note 2 to Section XVI read with Note 1(a) to Chapter 84, warranting its classification under Heading in Chapter 68 and according to rules governing classification of materials or substances or their parts.

14. Since 'Granite Press Roll' is an imported article, which is classified by us as Tariff item 84.31 of the 1st Schedule to the Customs Tariff Act, 1975 as it stood prior to its amendment on 28.2. 1986, the import duty payable thereon is only 40% as provided thereunder.

15. In the result, we allow this appeal, set aside the order of CEGAT under appeal, restore the order of the Collector (Appeals), and direct the respondents to refund the excess import duty collected on 'Granite Press Roll' to the appellant within one month from today. However, in the facts of this appeal, no order as to costs is made.