

A COLLECTOR OF CUSTOMS, BOMBAY

v.

BHARAT HEAVY ELECTRICALS LTD., NEW DELHI.

AUGUST 25, 1992

B [S. RANGANATHAN, V. RAMASWAMI AND
B.P. JEEVAN REDDY, JJ.]

Customs Tariff Act, 1975:

C *Items No. 84.04/05 and 90.24 of the Schedule and Notifications No.35/79-cus dated 15.2.79 and No.41/80-cus dated 25.3.80—Goods imported Assessable to basic customs duty under Item No. 92.04—Whether entitled to exemption from auxiliary duty as part of steam engines falling under Item No.84.04/05.*

D *Notification No.35/79-cus dated 15.2.1979 laid down conditions for exemption from payment of import duty on the goods imported, viz. (1) the exemption was given in respect of the duty on a part; (2) the part in question was part of an article; (3) the article fell under one of the various headings nos. set out in the notification; (4) the part was imported into India; and (5)*

E *the authorities concerned were satisfied that the part was required for the purpose of the initial setting up of the article; its assembly or manufacture. If these conditions were fulfilled, no import duty would be levied on the part as was in excess of the duty that would have been leviable on the article, had it been imported in a complete shape. Notification No.41/80-cus dated 25.3.1980 exempted the goods, which were partially or wholly exempt from*

F *the duty of customs specified in the first schedule to the Act, by virtue of Notification No.35/79 from the whole of the auxiliary duty of customs leviable on such goods under sub-section (1) of Section 4 of the Finance Act of 1980.*

G *The respondent-assessee, a public sector company engaged in the manufacture of heavy electrical machinery, imported various consignments of "pressure gauges" for manufacture of steam turbines. These pressure gauges were subjected to basic customs duty at the rate of 40% under item No. 90.24 of the schedule to the Customs Tariff Act, 1975. The assessee also paid an auxiliary duty at 5% in respect of the imports.*

H *Subsequently, the assessee claimed a refund of the auxiliary duty*

paid on the ground that the item was chargeable to customs duty at 40% only, without the levy of the auxiliary duty of 5%, in terms of Notification No. 35/79-cus dated 15.2.79 read with Notification No. 41/80-cus dated 25.3.80. The assessee's case was that the pressure gauges imported by it were the parts of articles falling under heading No. 84.04/05 and were chargeable to basic customs duty of 40% and, therefore, the parts could not be charged to duty at a rate in excess of 40%. The assessee's claim for refund was rejected by the Assistant Collector and the Appellate Collector. The Tribunal allowed the assessee's appeals.

In the appeals before this Court, on behalf of the department, it was contended that Notification No. 35/79 only exempted articles which fell under Item Heading No. 84.04/05 and since the pressure gauges had been assessed and were clearly assessable under item Heading No. 92.04, there was no question of the assessee getting any concession under Notification No. 35/79, and the relief in respect of auxiliary duty under Notification No. 41/80 was available only where the goods in question were partially or wholly exempt from duty of customs by virtue of the notifications of the Government of India specified in the Schedule, but in the instant case the duty of customs leviable on the part taken by itself, under Item Heading No. 92.04, as well as the duty leviable on the article of which it formed a part, under Item No. 84.04/05 were the same, and consequently, the pressure gauges had not become entitled to any exemption or concession by virtue of the Notification No. 35/79, and the terms of Notification No. 41/80 were thus not fulfilled and the assessee was not entitled to the relief claimed and that since the duty payable on the part, even without invoking the notification, was not in excess of the duty payable on the article, the assessee could not be said to have got a partial or complete exemption of basic duty by virtue of Notification No. 35/79, and consequently, the assessee could not claim any benefit under Notification No. 41/80; and though this interpretation would lead to an anomaly, inasmuch as the assessee would have been entitled to complete exemption from auxiliary duty if the rate of duty on the part had been 41%, but it was not so, if the rate had been 39% or 40% because the Notification did not apply to it in terms and since anomalies were inevitable in the case of provisions of this type.

Dismissing the appeals, this Court,

A HELD: 1.1. To get the benefit of Notification No. 35/79 it is not necessary that pressure gauge should be assessable under Item Heading No. 84.04/05. All that is needed is that it should be a part of an article falling, *inter alia*, under Heading No. 84.04/05 and that condition is fulfilled in the instant case as the pressure gauges, though assessable under Heading No. 92.04, are parts of steam engines which fall under Heading No. 84.04/05. There is no dispute that the pressure gauges imported by the assessee are parts of steam turbines manufactured by it and that the parts have been imported for the purpose of initial setting up of the steam engine or for its assembly or manufacture. The provisions of the first part of Notification No. 25/79 are, therefore, fulfilled. [23 D-E]

C 1.2. Relief under Notification No. 41/80 will not depend upon the actual operation or application of notification No. 35/79 in the case of a particular item of goods. It is intended for a class of goods. The 1979 notification grants an exemption or concession in respect of the basic duty payable on certain classes of goods viz., parts of articles which fall under one of the specified headings and required for certain purposes. The purport and intention of the 1980 notification is to exempt the class of goods falling under the purview of the 1979 notification from auxiliary duty as well. The exemption under the 1980 notification does not depend, in this view, on the practical effect of the application of the 1979 notification in a particular case. Its applicability should not be confined to items of goods in respect of which a reduction in duty is actually enjoyed under one of the notifications included in the schedule to the 1980 notification.

[24 G-H, 25A]

F 1.3. There is no logic in saying that the exemption from auxiliary duty in respect of the same part will be available only where the duty chargeable on the part is more than, but becomes equal to, that on the whole article by applying the 1979 notification but not where the duty on the part is the same as that of the whole even otherwise. Equally, it is wrong to say that when the part suffers a basic duty of 40% and the whole a duty of 40%, there will be a countervailing duty but that there will be no such duty where the basic duty on the part is 41% or more but reduced to 40% because of the 1977 notification. The correct position would be that the purpose and purport of the 1979 notification is to ensure that, in respect of the articles listed therein, the part should not suffer a higher duty than the whole. The 1980 notification likewise exempts this category

of articles, which enjoy the benefit of the same or less duty on the part than that on the whole, from auxiliary duty. This interpretation not only does not do any violence to the language of the notification but, on the other hand, gives effect to its true intent and purpose. [25 B-D] A

1.4. In the circumstances, the Tribunal was right in holding that the assessee was entitled to exemption from auxiliary duty in respect of the goods in question. [25 E] B

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3307/88, 494- 500 & 696/89. C

From the Orders Nos. 289, 471, 472, 465 to 469 and 479 of 1988/B2 dated 27.4.88, 17.10.88, 21.10.88 of the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi in Appeal Nos. C/1645/83- B2, CD(SB) 118/84-B2, CD/SB/1226/84-B2, C/611/84-B2, C/612/84-B2, C/613/84-B2, C/739/84-B2, C/1240/84-B2 and C/378/85-B. D

M. Gauri Shankar Murthy, A.S. Rao, Ms. Sushma Suri, P. Parmeshwaran and Dalip Tandon for the Appellant.

Raj Panjwani and Vijay Panjwani for the Respondents. E

The Judgment of the Court was delivered by

RANGANATHAN, J. All these appeals raise a common point and can be disposed of conveniently by the same judgment. The respondent in all these appeals is Bharat Heavy Electricals Limited (hereinafter referred to as 'the assessee'). F

The assessee is a public sector company engaged in the manufacture of heavy electrical machinery. It imported various consignments of "pressure gauges" from abroad for its hardware unit for use in the manufacture of steam turbines. These pressure gauges were subjected to basic customs duty at the rate of 40% under item no. 90.24 of the schedule to the Customs Tariff Act, 1975, which reads as under : G

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A	Heading No.	Sub-heading No. and description of article	Standard rate of duty
	90.24	Instruments and apparatus for measuring, checking or automatically controlling the flow, depth, pressure or other variables of liquids or gases or for automatically controlling temperature	
B		(for example, <i>pressure gauges</i> , thermostats, level gauges, flow meters, heat meters, automatic oven-draught regulators), not being	
C		articles, falling within Heading No. 90.14:	
	(1)	Not elsewhere specified	40%
	(2)	Thermostats and humidistats	60%

(Emphasis added)

D The assessee also paid an auxiliary duty at 5% in respect of the imports.

E Subsequently, the assessee claimed a refund of the auxiliary duty paid on the ground that the item was chargeable to customs duty at 40% only, without the levy of the auxiliary duty of 5%. This Claim was based on the terms of notification no. 35/79-cus dated 15.2.79 read with notification no. 41/80-cus dated 25.3.80. This claim for refund was rejected by the Assistant Collector and the Appellate Collector. When the matter came up before the Tribunal, it was inclined to take a view against the assessee but, as there was an earlier decision of the Tribunal to the contrary, decided to follow F it and hold against the Department. The Tribunal, therefore, allowed the assessee's appeals. The department has preferred these appeals.

The relevant portion of notification no. 35/79 may now be extracted, which reads thus :

G "Exemption to parts of any article falling under Chapters 82, 84, 85, 86 and 87 and meant for initial set up or assembly of that article : In exercise of the powers conferred by sub-section (1) Section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the notification of the H Government of India in the Department of Revenue and

Banking No. 350- Customs, dated the 2nd August, 1976, the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempt interest so to do, hereby exempt *parts of any article falling under the Headings Nos. 82.05(2), 84.01/02, 84.03, 84.04/05, 84.07, 84.08(1), 84.09, 84.10(1), 84.11.(1), 84.11(4), 84.13, 84.14, 84.15(1), 84.16, 84.17(1), 84.18(1), 84.22, 84.23, 84.24(1), 84.25, 84.26, 84.28, 84.29, 84.30(2), 84.31, 84.32, 84.33, 83.34, 84.35, 84.36, 84.37(1), 84.38(1), 84.39, 84.40(1), 84.41(1), 84.42(1), 84.42(2), 84.43, 84.44, 84.45/48, 84.49, 84.56, 84.57, 84.59(2), 85.02(1), 85.11(1), 85.18/27(3), 85.19/27(7), 86.01/03, 87.01(1) and 87.02(3) of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India and proved to the satisfaction of the Assistant Collector of Customs to be required for the purpose of the initial setting up of that article or for its assembly or manufacture as is in excess of the rate applicable to the said article when imported complete, subject to the following conditions, namely :-*

xxx xxx xxx"

If we analyse the notification the conditions of exemption will be seen to be as follows : E

- (1) The exemption is given in respect of the duty on a *part*;
- (2) The part in question should be the part of an *article*;
- (3) The *Article* must fall under one of the various headings nos. set out;
- (4) The part must be imported into India;
- (5) It must be shown to the satisfaction of the authorities that the *part* is required for the purpose of the initial setting up of the article, its assembly or manufacture. G

If these conditions are fulfilled, not import duty will be levied on the *part* as is in excess of the duty that would have been leviable on the *article*, had it been imported in a complete shape. Here the assessee's case is that the pressure gauges imported by it are the *parts of articles* which admittedly H

A fall under Heading No. 84.04/05 and are chargeable to a basic customs duty of 40%. So the parts cannot be charged to duty at a rate in excess of 40%. On this, indeed, there is no dispute.

B There is dispute however, regarding its claim for exemption from the levy of auxiliary duty. This claim is based on notification no. 41/80 which, to the extent relevant, reads as follows :

C "In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), read with sub-section (4) of Section 4 of the Finance Act, 1980 (13 of 1980) and in supersession of the Notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 27-Customs, dated the 12th March, 1980, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts *the goods which are partially or wholly exempt from the duty of Customs* specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) *by virtue of the Notifications of the Government of India* in the Ministry of Finance or in the Department of Revenue and Banking, *specified in the Schedule below* from the whole of the Auxiliary Duty of Customs leviable on such goods under sub-section (1) of Section 4 of the said Finance Act."

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198, No. 35-Customs, dated the 15th February, 1979.

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(Emphasis added)

Sri Gauri Shanker Murthy, learned counsel appearing for the department, raises two contentions :

H (i) Notification No. 35/79 only exempts articles which fall under Item

Heading No. 84.04/05 and since the pressure gauges, the articles presently in question, have been assessed and are clearly assessable under item Heading No. 92.04, there is no question of the assessee getting any concession under Notification No.35/79. In this connection our attention is drawn to the terms of the Note 1(g) and (1) and 2 to section XVI of the Schedule. A

(ii) The relief in respect of auxiliary duty under Notification No. 41/80 is available only where the goods in question are partially or wholly exempt from duty of customs by virtue of the notifications of the Government of India specified in the Schedule. In the present case the duty of customs leviable on the part taken by itself, under Item Heading No. 92.04, as well as the duty leviable on the article of which it forms a part, under item 84.04/05, are the same. Consequently, the pressure gauges have not become entitled to any exemption or concession by virtue of the Notification No. 35/79. The terms of the Notification No. 41/80 are thus not fulfilled and the assessee is not entitled to the relief claimed. B

So far as the first point raised by the learned counsel is concerned, we think it proceeds on a misconception. To get the benefit of Notification No. 35/79 it is not necessary that pressure gauge should be assessable under item Heading No. 84.04/05. All that is needed is that it should be a part of an article falling, *inter alia*, under Heading No. 84.04/05 and that condition is fulfilled here as the pressure gauges, though assessable under Heading No. 92.04, are parts of steam engines which fall under Heading No. 84.04/05. There is no controversy before us that the pressure gauges imported by the assessee are parts of steam turbines manufactured by it and that the parts have been imported for the purpose of initial setting up of the steam engine or for its assembly or manufacture. The provisions of the first part of Notification No. 35/79 are, therefore, fulfilled. The contents of the Note of which our attention has been drawn are act, in our opinion, of any assistance. Note 1(g) is of no assistance at all. Note 1(1) only makes it clear that pressure gauges will be assessable under item Heading No. 90.24 and cannot be brought under 84.04/05 or any other item heading in chapters falling under section XVI merely because they are parts of such article. Similarly, Note 2 to Section XVI only makes it clear that even parts of machinery may be assessable under the same heading as the main machinery, provided they form an integral part of the machine and are suitable for use more or less or principally with a particular kind of machine or number of machines falling under a particular heading. But since this note is subject to note 1(1), it does not alter the position C D E F G H

A that the parts are assessable under Heading No. 92.04. We do not think it necessary to discuss the contents of these Notes more elaborately; it is sufficient to say that they do not advance the first contention urged on behalf of the appellants.

B The second contention of the learned counsel runs thus : the concession or exemption from auxiliary duty under Notification No. 41/80 can be claimed only in respect of goods which are partially or wholly exempt by virtue of notification no. 35/79. The parts in the present case as well as the principal article of which they are part are both assessable to basic duty at the same rate. Since the duty payable on the part, even without invoking the notification, is not in excess of the duty payable on the article, the assessee cannot be said to have got a partial or complete exemption of basic duty by virtue of Notification No. 35/79. Consequently, the assessee cannot claim any benefit under Notification No. 41/80. This interpretation no doubt leads to an anomaly in marginal cases. If the rate of duty on the part had been 41%, the assessee would have been entitled to a complete exemption from auxiliary duty. On the other hand, if the rate of duty on the part had only been 39% or 40%, he would have to pay the auxiliary duty because the Notification does not apply to it in terms. Counsel, however, submits that such anomalies are inevitable in the case of provisions of this type and that, in taxing matters, it is imperative to concentrate on the language of the statute or the relevant statutory instrument. If the wording clearly imposes a tax or gives a relief, that should be given effect to. If the wording does not justify either the imposition or the relief, it should not be extended merely on the ground that there may be some unintended anomaly as a consequence of the interpretation or that the equities of the situation require a more liberal interpretation.

F There is, however, another way of reading the notifications before us and it is this which appeals to us as the more reasonable one. On this interpretation, relief under notification no. 41/80 will not depend upon the actual operation or application of notification no. 35/79 in the case of a particular item of goods. It is intended for a class of goods. The 1979 notification grants an exemption or concession in respect of the basic duty payable on certain classes of goods viz. parts of articles which fall under one of the specified headings and required for certain purposes. The purport and intention of the 1980 notification is to exempt the class of goods falling under the purview of the 1979 notification from auxiliary duty as well. The exemption under 1980 notification does not depend, in this view, on the practical effect of the ap-

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plication of the 1979 notification in a particular case. Its applicability should not be confined to items of goods in respect of which a reduction in duty is actually enjoyed under one of the notifications included in the schedule to the 1980 notification. There appears to be no logic in saying that the exemption from auxiliary duty in respect of the same part will be available only where the duty chargeable on the part is more than, but becomes equal to, that on the whole article by applying the 1979 notification but not where the duty on the part is the same as that of the whole even otherwise. Equally, it seems absurd to say that when the part suffers a basic duty of 40% and the whole a duty of 40%, there will be a countervailing duty but that there will be no such duty where the basic duty on the part is 41% or more but reduced to 40% because of the 1977 notification. The correct position appears to be that the purpose and purport of the 1979 notification is to ensure that, in respect of the articles listed therein, the part should not suffer a higher duty than the whole. The 1980 notification likewise exempts this category of articles, which enjoy the benefit of the same or less duty on the part than that on the whole, from auxiliary duty.

We think that this interpretation not only does not do any violence to the language of the notifications but, on the other hand, gives effect to its true intent and purpose. We, therefore, uphold the view taken by the Tribunal some what hesitantly, that the assessee was entitled to exemption from auxiliary duty in respect of the goods in question.

Shri Murthy, at one stage, pointed out that the claims in the present case also related to consignments imported on or after 1.3.81. He submitted that the notification no. 41/80 had ceased to be in force on 28.2.81 and that the exemption from countervailing duty was not available thereafter. Though this was a new point, we were inclined to consider it. But, after some further research into the terms of the various notifications issued on or after 1.3.81, he conceded that the exemption continued to be available on the same or similar terms. We, therefore, do not discuss the position after 1.3.81 separately with detailed reference to the relevant notifications. We make it clear that our conclusion earlier set out will apply to the import consignments falling for consideration in all the appeals now before us.

For the reasons stated above, all these appeals are dismissed. We, however, make no order regarding costs.

N.P.V.

Appeals dismissed.