

M/S MOORCO (INDIA) LTD. MADRAS
v.
THE COLLECTOR OF CUSTOMS, MADRAS

SEPTEMBER 29, 1994

[R.M. SAHAI AND N.P. SINGH, JJ.]

Customs Act, 1962 :

Schedule—General rule for interpretation—Rules 2(b), 3(a)(b)(c)—Applicability of rules—When arises—Goods consisting of more than one material or substance—Classification of—How to be done—Held specific heading of classification should be preferred over general heading.

Import Tariff—Tariff Items : 90.24, 90.26 and 90. 29.

Flow meter—Import of components of flow meter—Levy of duty—Held components are to be classified under item 90.24 for levy of duty.

The appellant, a manufacturer of "Volumetric displacement type flow meter", imported components and accessories for being used in the flow meter. The Assistant Collector held that (i) the accessories imported were used solely for the meter manufactured by the appellant; (ii) the meter was capable of showing the rate of flow but since it was used for measuring volume also, it was liable to be classified under Tariff Heading 90.26 for purposes of payment of duty. For coming to this conclusion the Assistant Collector relied on clause (c) of Rules 3 of the General Rules for interpretation of the first schedule-Import Tariff of the Customs Act, 1962. The findings recorded by the Assistant Collector were affirmed by the Collector (Appeals) as well as by the Tribunal. Against the order of the Tribunal appeal was filed in this court.

Allowing the appeal, this Court

HELD : 1. The items imported by the appellant shall be classified for purposes of payment of duty under Tariff Heading 90.24. On the finding recorded by the Assistant Collector the end-product manufactured by the appellant being specially provided under Tariff Item 90.24 the accessories imported by the appellant which was solely used for manufacture of it was liable to be classified on the same rate as the item in which

A it was used, namely flow meter. [86-G, 84-H, 85-A]

B 2. Interpretory Rules appended to the Customs Schedule are framed on Brussels Convention so that same description may apply to a particular class and character of goods in the world trade. Rule 2(b) of the Rules provides that, 'the classification of goods consisting of more than one material or substance shall be according to the principles of rule 3. Further each of the clauses of Rule 3 are mutually exclusive. What is covered in clause (a) cannot be classified in (b) and (c) operates when neither applies. It is like a residuary clause. Clause (a) incorporates the common and general principle that the goods which can be classified specifically with reference to any heading should be placed in that category alone. The specific heading of classification has to be preferred over general heading. The clause contemplates goods which may be satisfying more than one description. Or it may be satisfying specific and general description. In either situation the classification which is the most specific has to be preferred over the one which is not specific or is general in nature. [85-B, C, H, 86-B, C]

E 3. Flow meter is specifically classified in heading No. 90.24. Whereas the heading 90.26 is general in nature. It applies to every production meter or calibrating meter for gas, liquid and electricity supply. Therefore, on the finding recorded by the Assistant Collector, the goods produced by the appellant specifically fall in 90.24. They may also fall in 90.26 but that being more general entry preference should have been given to the entry 90.24 as the goods satisfy most specific description of being flow meter. Since the goods manufactured by the appellant satisfied the specific description of Tariff Heading 90.24 being a flow meter, the Tribunal committed an error of law in classifying it under Tariff Heading 90.26 as it was a latter item under the classification list. [86-D to F]

CIVIL APPELLATE JURISDICTION : Appeal No. 4342 of 1986.

G From the Judgment and Order dated 27.10.86 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in A. No. C/1600/86-B-2.

C.S. Vaidyanathan, and S.R. Setia for the Appellant.

H Joseph Valla Pally, G. Prakash and V.K. Verma for the Respondent.

The following Order of the Court was delivered :

A

An interesting question of law relating to applicability of rules of interpretation appended to the Schedule of Customs Act arises for consideration in this appeal.

The appellant is a manufacturer of, "volumetric displacement type flow meter" (for short 'the meter'). It imported goods described as "components and accessories of volumetric displacement type flow meter" for use in the end product. The flow meter manufactured by the appellant consists of the following devices :

B

(a) a device for measuring the variable to be controlled.

C

(b) control device which compares the measured value with the desired value and actuates the starting stopping (or) operating device.

(c) a starting, stopping (or) operating device.

D

(d) action device which carries out orders received either directly (or) through amplifying relays from device (C).

In the Bill of lading the item imported is described as Industrial Metric Equipment (component and accessory Volumetric Type Flow Meter). In the Purchase Order from Bharat Petroleum Corporation Ltd. the item manufactured by the appellant is described as under :

E

"To manufacture, test, pack and supply the flow meters with accessories and spares as under :

Double case type flow meters including accessories (as per details given in the attached Continuation Sheet)."

F

If the Purchase Order from Indian Oil Corporation Limited the item has been described as under :

MODEL SD 30 75mm dia (3") single case rotary vane positive displacement meter with large numeral counter, the rate of flow indicator, strainer-cum-air eliminator as per specification given below"

G

From all this material it appears what was imported by the appellant was

H

A component for being used in the flow meter. It is so understood in the commercial circle. Even the Assistant Collector held that the meter produced by the appellant was capable of showing the rate of flow. But according to him since it was used for measuring volume also, therefore, it was liable to be classified under the Tariff Heading 90.26. For this reliance was placed on clause (c) of the General Rules for Interpretation of the First Schedule - Import Tariff of the Custom Act. The finding recorded by the Assistant Collector has not been disturbed by the Collector (Appeals) or by the Tribunal. The relevant Tariff Items read as under :

C "90.24 Instruments and apparatus for measuring, checking or automatically controlling the flow, depth, pressure or other variable of liquids or gases or for automatically controlling temperature (for example, pressure gauges, thermostats, level gauges, flow meters, heat meters automatic oven-draught regulators), not being articles falling within Heading No. 90.14:

D (1) Not elsewhere specified 40%
(2) Thermostats and Humidistats 60%

E 90.26 Gas, liquid and electricity supply or production meter, calibrating meters therefor. 60%

90.29 Parts or accessories suitable for use solely or principally with one or more of the articles falling within Heading Nos. 90.23, 90.24, 90.26, 90.27 or 90.28."

F Flow meters are specifically covered in Tariff Heading 90.24. Specific excludes general, is the well-known principle. Heading 90.29 permits levy on parts or accessories which are used solely in the manufacture of one or more of the articles falling within Heading 90.24. The Assistant Collector held that the accessories imported by the appellant were used solely for the meter manufactured by the appellant. Therefore, if the meter manufactured by the appellant can be said to satisfy the description of Tariff Heading 90.24 then by virtue of Tariff Heading 90.29 the rate of duty on the components imported by the appellant could be levied as in tariff Heading 90.24. On the finding recorded by the Assistant Collector the end-product manufactured by the appellant being specifically provided for by 90.24 the accessory imported by the appellant which was solely used for

manufacture of it was liable to be classified on the same rate as the item in which it was used, namely, flow meter. A

Does classification change and the goods are liable to be placed in heading 90.29 by virtue of the Interpretory Rules appended to the Customs Schedule? These Rules are framed on Brussels Convention so that same description may apply to a particular class and character of goods in the world trade. The First Schedule appended to the Customs Act lays down general principles for the interpretation and classification of goods for import tariff. Rule 2(b) of the Rules provide that, 'the classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.' Rule 3 of the Rules is reproduced below : B C

"R. 3. - When by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows :

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods. D E

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

(c) when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration. " G

The applicability of the rules arise when the goods consisting of more than one material fall in two or more headings. It is further clear that each of the classes are mutually exclusive. What is covered in (a) cannot be classified in (b) and (c) operates when neither applies. It is like a residuary H

A clause. The primary question, therefore, is whether the goods manufactured by the appellant fall in clause (a) as if it can be classified with reference to (a) then clauses (b) and (c) would not apply. Class (a) incorporates the common and general principle that the goods which can be classified specifically with reference to any heading should be placed in that category alone. The specific heading of classification has to be preferred over general heading. The clause contemplates goods which may be satisfying more than one description. Or it may be satisfying specific and general description. In either situation the classification which is the most special has to be preferred over the one which is not specific or is general in nature. In other words, between the two competing entries the one most nearer to the description should be preferred. Whether the class of goods manufactured by an assessee falls say in more than one heading one of which may be specific, other more specific, third more specific and fourth general. The rule requires the authorities to classify the goods in the heading which satisfies most specific description. For instance, taking the case of appellant the item manufactured by the appellant is described and used as flow meter. It is an instrument for measuring volume as well. Flow meter is specifically classified in heading No. 90.24. Whereas the heading 90.26 is general in nature. It applies to every production meter or calibrating meter for gas, liquid and electricity supply. Therefore, on the finding recorded by the Assistant Collector the goods produced by the appellant specifically fall in 90.24. They may also fall in 90.26 but that being more general entry preference should have been given to the entry 90.24 as the goods satisfy most specific description of being flow meter. The Tribunal or the appellate authority without adverting to it applied clause (c) and levied duty under 90.26 as it was a latter heading. But clause (c) would apply only if clauses (a) and (b) do not apply. Since the goods manufactured by the appellant satisfied the specific description of Tariff Heading 90.24 being a flow meter, the Tribunal committed an error of law in classifying it under Tariff Heading 90.26 as it was a latter item under the classification list.

G In the result, this appeal succeeds and is allowed and it is held that the items imported by the appellant which are component part of the flow meter shall be classified for purposes of payment of duty under Tariff Heading 90.24.