

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 4213-4214 OF 2000

Modern Mallebles Ltd. Appellant (s)

VERSUS

Commnr. Of Central Excise

Calcutta Respondent(s)

(With appln. For permission to place addl. Documents on record and permission to place addl.

Documents on record)

(With office report)

Date: 29/09/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL

HON'BLE MR. JUSTICE S.H. KAPADIA

For Appellant(s) Mr. Dhruv Mehta,adv.
Mr. S.Chaudhary,adv.
Mrs. Sarla Chandra,Adv.

For Respondent(s) Mr. T.S.Doabia,Sr.Adv.
Mr. M.S.Doabia,adv.
Mr. P.Parmeshwaran,Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeals are disposed of.

[SUMAN WADHWA]

[MADHU SAXENA]

COURT MASTER

COURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4213-4214 OF 2000

Modern Malleables Ltd. .. Appellant

vs.

Commnr. Of Central Excise,
Calcutta .. Respondent

O R D E R

The appellant manufactured various goods including Conductor Accessories and Miscellaneous Fittings, P.G. Clamps, Repair Sleeves and about sixty other items. The appellant claims that all these items are used as Accessories/Fittings in electrical transmission lines. It is therefore contended that the products are rightfully classifiable under Tariff Entry 85.48 which provides for "electrical parts of machinery or apparatus not specified or included elsewhere in this Chapter". The Chapter in question is Chapter 85. Chapter 85 falls within Sec.XVI of the Central Excise Tariff Act 1985 (hereinafter referred to as 'the Act'). The Heading of the Chapter reads as:

"Electrical machinery and equipment and

parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles".

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According to the appellant it is the admitted case that all its products are supplied to State Electricity Boards and two other power agencies. They claim that their products are classifiable under Tariff Entry 85.48 because the items produced by them are electrical parts of an apparatus within the meaning of that tariff entry. The apparatus in question is said to be the transmission lines. According to the appellant this position had been accepted by the Department of Central Excise and the classification list showing these items as assessable to duty under Tariff Entry 85.48 had been accepted by the Department as far back as in 1989. A show cause notice was, however, issued to the appellant by the Assistant Collector of Central Excise. It was alleged in the show cause notice that the items were variously classifiable under tariff entry 7326.90, 76.08 and 7616.90. These three tariff entries read respectively as follows:

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Other articles of iron or steel

Forged or stamped, but not further worked:

7326.9	Other	15.00%
76.08	Aluminium tubes and pipes	50% plus
		Rs. 4000
7608.10	Of aluminium, not alloyed	per tonne

	7608.20	Of aluminium alloys	50% plus Rs. 4000 per tonne
76.16		Other articles of aluminium	
	7616.10	Nails, tacks, staples (other than those of heading No. 83.05), screws, bolts, nuts, screw hooks, rivets, cotters, cotter-pins, washers and similar articles	30%
	7616.90	Other	35%

In the show cause notice the reason given by the ACCE for the challenge to the existing classification was on the principle that the products would have to be classified according to their constituent material. Since the various products were manufactured either by iron ore or aluminium, they were properly classifiable under

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the three sub-headings noted above. The classification list was accordingly approved with this amendment. Being aggrieved, the appellant approached the Collector. The Collector did not interfere with the finding of the ACCE (Collector- Appeals). The matter came up before the Central Excise Gold (Control) Appellate Tribunal (CEGAT). The Tribunal also dismissed the appeal. The Tribunal held that the transmission lines basically consist of electricity conducting cable and power for supporting and keeping the cables in position etc. These transmission cables, according to the Tribunal, "cannot be called machinery or apparatus at all".

Being aggrieved by the decision of the

Tribunal, the appellant has preferred this appeal. According to the appellant the Tribunal has arrived at its conclusion that transmission cables cannot be called apparatus without any discussions whatsoever. It is stated that if the transmission lines were in fact apparatus, then the products in question would be electrical parts of an apparatus. It is also pointed out to us that articles mentioned in Sec.XVI were specifically excluded by Section Note 1(f) of Sec. XV.

It may be mentioned

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that three tariff headings under which the Department seeks to classify the appellant's goods all occur within this particular Section. Tariff heading 7326 appears under Chapter 73 which deals with articles of iron ore steel. The Remaining two articles appear in Chapter 76 which deals with aluminium and articles thereof. Both these chapters fall within Sec. XV which is headed "Base metals and Articles of Base metals. It is contended that unless the respondent and the Tribunal had explicitly found on cogent material that the articles in question were not classifiable under Chapter 85 under tariff heading 85.48, they could not proceed under any of the chapters under Sec. XV.

The approach of the Tribunal was cursory. Apart from the axiomatic statement that transmission cables cannot be called machinery or apparatus at all, there is no reason in support of this conclusion. The consequence of this is that the Tribunal's decision cannot be upheld. By reason of the provisions of

Section Note 1(f) of Sec.XV, the Tribunal must address itself to the question whether the transmission lines could be apparatus at all. For the purpose of tariff heading 85.48 our attention was drawn to several definitions of the word 'apparatus' by the appellant who has contended

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that it had an arguable case that the transmission lines were equipment for the purpose of the transmission of electricity and that the parts manufactured for such transmission fall within tariff heading 85.48. None of these definitions have been considered by the Tribunal. It has proceeded purely on the basis as if the sole test for classification under the Act was the constitution of the particular item. In our view there is no invariable test to determine the question of classification. It would depend upon the nature of the tariff heading. The constituents or the elements of a transmission cable would not be of any relevance in deciding whether a transmission cable is an apparatus or not. If the Tribunal comes to the conclusion, despite the material being produced before it, that the transmission lines are not electrical apparatus, then of course, there is no question of the appellant's goods being classified under tariff heading 85.48. However, if the Tribunal comes to the conclusion that transmission lines may be apparatus, then the further question would arise whether the products manufactured by the appellant could be described to be electrical parts.

Learned counsel for the appellant states that in fact the show cause notice had proceeded on a

completely different footing. We do not examine the

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matter in greater detail apart from holding that the Tribunal has proceeded wrongly in this case. It will be open to the appellant to raise the contention that the Department could not take a stand contrary to the allegations made in the show cause notice. The Tribunal will proceed to decide that dispute along with meaning and scope of tariff heading 85.48. If the Tribunal feels that it is not possible for the Tribunal to classify the several products produced by the appellant and which are the subject matter of show cause notice by reason of their very number, it will be open to the Tribunal to lay down the principles and leave the determination and implementation of such decision to the adjudicating officer.

The appeals are disposed of.

.....J.
(RUMA PAL)

.....J.
(S.H. KAPADIA)

New Delhi;
September 29, 2005.