

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). 4237 OF 2004

M/S. CHAMUNDI DIE CAST (P) LTD.

Appellant (s)

VERSUS

COMMNR. OF CENTRAL EXCISE, BANGALORE

Respondent(s)

(With appln(s) for Ad-interim stay of recovery and office report)

WITH Civil Appeal NO. 4851 of 2005

(With appln. for c/d in re-filing appeal)

(With office report)

Date: 01/05/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Appellant(s)

Mr. AR Madhav Rao,Adv.

Mr.

Monish Panda,Adv.

Mr.

M.P.Devanath,Adv.

Mr. Rajesh Kumar,Adv.

For Respondent(s)

Mr. R.G.Padia,Sr.Adv.

Mrs. Sunita Rao,Adv.

Mr. B. Krishna Prasad, Adv.

Mr. P. Parmeswaran, Adv.

UPON hearing counsel the Court made the following

O R D E R

C.A.No. 4237/2004

The appeal is allowed with no order as to costs.

C.A.No. 4851/2005

This appeal is dismissed as infructuous.

[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 NO. 4237 OF 2004

M/S. CHAMUNDI DIE CAST (P) LTD. .. APPELLANT

vs.

COMMNR. OF CENTRAL EXCISE,

WITH

CIVIL APPEAL NO. 4851 OF 2005

O R D E R

1. This statutory appeal filed by the assessee under Sec.35 (L)(b) of Central Excise Act 1944 against the final order No.104/2004 dated 23.1.2004 in Appeal No. E/740/2000 passed by Customs, Excise & Service Tax Appellate Tribunal, Bangalore (Appellate Tribunal) by which the Tribunal has upheld the order of the Commissioner classifying aluminium castings dedicated to IC engines for agricultural machinery under Chapter sub-heading (CSH) 8409.00 of Central Excise Tariff Act demanding differential central excise duty of Rs.30.42 lakhs for the period Ist December 1992 to June 30, 1997 by invoking the longer period of limitation under the proviso to Sec.11-A(1) of the said 1944 Act.

2. The assessee-appellant was manufacturing excisable goods classifiable under Chapter 84 of Central Excise Tariff Act 1985. They were manufacturing Side Covers, Rear Covers, Fan Brackets, Oil Supply Ring and Balance Shaft Covers (aluminium castings). They were classifying these castings under CSH 8432.00 by declaring the said items as part of Power Tillers. The classification list was approved from time to time. However on 2.1.1998 a show cause notice was issued by the Department stating that the said aluminium castings were actually used in the manufacture of IC engines by the customers of the assessee, M/s. Kerala Agro Machinery Corporation Limited and since parts of IC engines were classifiable under CSH 8409.00 differential duty under Rule 9(2) of Central excise Rules 1944 amounting to Rs. 30.42 lakhs for the period 1/12/92 to 30/6/1997 was demanded from the assessee (appellant). This demand has been confirmed

ultimately by the adjudicating authority and by the Tribunal. Hence, this civil appeal is filed by the assessee.

3. In the present case two points arise for determination, namely, classification, and invocation of the proviso to Sec.11-A (1) of the said 1944 Act.

4. On the first point as to whether aluminium castings were classifiable under Chapter Heading 84.32 or Chapter Heading 84.09, learned counsel for the assessee concedes that the aluminium castings would fall under Chapter Heading 84.09. We quote hereinbelow CSH 8432.00 as also CSH 8409.00.

"8432.00: Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers

"84.09: Parts suitable for use solely or principally with the engines of heading No.84.07 or heading No.84.08.

5. Coming to the question of invocation of longer period we quote hereinbelow Notification No.111/88 dated 1.3.88 Exemption to certain specified goods of Chapters 82 and 84: - In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts goods of the description specified in column (3) of the Table hereto annexed and falling under Chapter or heading Nos. of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as are specified in the corresponding entry in column (2) of the said Table, from the whole of the duty of excise leviable thereon which is specified in the said Schedule.

THE TABLE

S.No.	Chapter or Head-	Description of goods
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cleaning, sorting or grading eggs,
agricultural produce.

fruit or other

11. 84.36 Other agricultural, horticultural, poultry-
keeping or bee-keeping machinery, including
plant fitted with mechanical or
equipment, poultry incubators and

germination
thermal
brooders.

12. 84.37 Machines for cleaning, sorting or grading seed,
grain or dried leguminous vegetables,
machinery used in the milling industry or for
of cereals or dried leguminous

the working
vegetables.

13. 82 or 84 Parts of goods specified at S.No.01,04 and 08 to
12 above.

[Notification No.111/88-C.E., dated 1-3.1988 as amended by
Notification No.141/88-C.E., dated 18-4-1988]

6. A bare reading of the aforesaid Notification indicates
that it seeks to exempt "parts of goods" specified at serial Nos.
08 to 12 from payment of duty. In the present case we are
required to read serial No. 13 with serial Nos. 08-12 of the said
Notification. Serial No.13 states that parts of goods which fall
under Chapter 84 at serial Nos. 08 to 12 shall stand exempt
from payment of duty. According to the Department
description of the goods at serial No.09 categorically refers to
Chapter Heading 84.32 which in the present case is not at all
applicable, particularly, when the castings came under Chapter
Heading 84.09. On the other hand, it has been contended on

behalf of the assessee that the said exemption Notification
specifically refers to Agricultural machinery which includes
Power Tillers and consequently aluminium castings which are

a part of IC engines dedicated only to agricultural machinery would also attract exemption. As stated above the assessee concedes that aluminium castings do fall under Chapter Heading 84.09. However it is their contention that they genuinely believed that their goods came under the said Notification which gave exemption to parts of agricultural machinery under Chapter 84. That such castings used in IC engines which were dedicated only to agricultural machinery would also get the benefit of nil rate of duty. IC engines by themselves could form part of agricultural machinery. It could form part of various other types of machineries also. The object behind the exemption Notification was to give exemption to agricultural machinery and parts thereof. If the end product was alone to be given the benefit then the object behind enactment of exemption Notification would have failed. In the circumstances the assessee believed that they were covered under the above notification.

7. We find merit in the above contention, namely, that the assessee acted on the genuine belief that their goods were covered by the exemption notification. There was no intention to evade duty. They acted under the genuine belief, particularly when the department over the years approved the classified list filed by them under CH 84.32. The assessee had sold the above castings to State PSU, namely, Kamco who also told them to classify the said goods under CH 84.32.

8. In the circumstances we are of the view that the Department was not entitled to invoke the extended period of limitation. There is one more reason why we say so. In the present case IC engines were supplied to Kamco. At the relevant time Kamco had recommended to the assessee that they should take advantage and classify the aluminium castings in Chapter Heading 84.32. Even Kamco was of the view that the castings came under Chapter Heading 84.32. Kamco was the customer of the assessee. It is a State Public

Undertaking. The Department had at one stage given a show cause notice to Kamco which conceded that they had recommended classification of castings under CH 84.32. This explanation of Kamco was accepted by the department. If that be the case then in our view the assessee was also not entitled to be proceeded with by invoking the extended period of limitation.

9. For the aforesaid reasons we set aside the impugned decision of the Tribunal stating that although the said Aluminium Castings would fall under CH 84.09, the proceedings instituted for recovery of differential duty by invoking the proviso to Section 11A(1) were beyond the period of limitation. Therefore the amount of differential duty deposited by the assessee for the period 1st December 1992 to 30 June 1997 in the said proceedings shall be refunded in accordance with law. The Civil Appeal is accordingly allowed with no order as to costs.

10. Since we have allowed the assessee's civil appeal herein nothing survives in the civil appeal No.4851 of 2005 filed by the assessee against the order of the Tribunal dismissing its Rectification Application. Hence the said civil appeal No. 4851/05 is dismissed as infructuous.

.....J.

(S.H. KAPADIA)

.....J.

(B.SUDERSHAN REDDY)

NEW DELHI;

MAY 1, 2007.