

Appellant Rep by: Shri Rahul Shukla & Ms Sakshi, Advs.

Respondent Rep by: Shri Rakesh Kumar (DR)

CORAM: C L Mahar, Member (T)

Rachna Gupta, Member (J)

Cus - The assessee has imported fuel pump unit assembly, classifying the same under chapter heading 84099199 - During random check, the department formed an opinion that the goods imported are rather classifiable under chapter heading 84133090 - Apparently, 54 bills of entry have already been cleared under classification of 84099199 seeking an exemption of 50% BCD furtherance of notfn 85/2004 denying the applicability of said notification upon the assessee for the goods imported being classified under 8413 to which the notification is not applicable, that the benefit of exemption is denied and recovery to the extent of Rs. 38393215/- has been confirmed which has been challenged by assessee - A conjoint reading of description of goods for tariff item 8413 and 8409 makes it abundantly clear that all pumps meant for fuel lubricating or cooling medium for internal combustion piston engines are classified under 841330 and all other pumps for internal combustion piston engines for other than lubricating or cooling medium are classified under 84133090 - Thus, the tariff Act itself gives a clear cut distinction between a good which is merely a part or the part which can, specifically, be classified as a pump - It becomes clearer that the items which are specifically included in CTH 8413 are clearly excluded from CTH 8409 irrespective they are used solely or principally with the engines of heading 8407 and 8408 - The fuel injecting pumps are neither an accessory nor the spare part of engine of a motor vehicle - These pumps are classifiable only under heading 8413, the parts of these pumps are classifiable only under heading 841391 - Support drawn from the decision of Tribunal in case Monitor Enterprises wherein it was held that fuel injection pumps for ignition engine are excluded from heading 8409 as per explanatory notes volume 3 at page 1152 of HSN explanatory notes - Notfn 85 of 2004 has no such entry which includes items of chapter 8413 - The assessee has wrongly availed the benefit of exemption of 50% BCD of products imported by him by wrongly classifying them as the parts solely and exclusively used with the engines ignoring the specific entry for classification of pumps - There is no denial that the goods which are classified by him as parts are actually meant to function as pumps - Accordingly, no infirmity found in the order-under-challenge - The assessee has wrongly classified his goods classifiable under CTH 841330 intentionally under CTH of 840991 with an intent to wrongly avail the benefit of exemption of 50% of BCD - It is worth taking a note of the fact that the bill of entry was filed under self-assessment regime and the importer need to be doubly sure that what they are claiming is legally correct - The department has committed no error while holding such an act on the part of assessee as an intentional misrepresentation, which the section note 2 to section 16 of Customs Tariff specifically provides a methodology of classification of pumps and parts of engines - Classifying the product under a wrong entry continuously for as many as more than 50 bills of entry cannot be an act of ignorance - Hence, department has committed no error while invoking the extended period of limitation and therefore, the SCN cannot be held to be barred by time: CESTAT

Appeal dismissed

Case laws cited:

Monitor Enterprises Vs. Commissioner of Customs reported in 2001 (239) ELT 2017... Para 14

FINAL ORDER NO. 51548/2019

Per: Rachna Gupta:

M/s Keihin Automotive Systems India Pvt. Ltd. (KASIPL) is a company incorporated which is engaged in imports of fuel pump unit assembly. Various bills of entry from 29.01.2014 to 18.02.2016 for import of said fuel pump from Thailand at a combined assessable value of Rs. 426752486/- were filed by the Appellant. They were classifying the said goods under the tariff item 8409-91-99 of first schedule to Customs Tariff Act, 1975 (Tariff Act). And were availing exemption from Basic Customs Duty BCD in furtherance of notification 85/2004-CUS dated 31.08.2004 which provides for exemption from BCD to the extent of 50% of the rates prescribed therein on the import of specified goods from Thailand. Entry No. 43 of said notification includes all goods classifiable under sub-heading 8409-91.

2. During test check of EDI data, department noticed that the appellant has wrongly classified the goods and that Rule 126 of General Rules of Interpretation (GIR) of harmonized system for classification of goods have not been followed. The Rules inter-alia provides that, "for legal purposes, classification shall be determined according to the terms of headings and any relative section or chapter notes". Accordingly, an opinion was formed that the pumps for liquid whether or not fitted with a measuring device are classifiable under chapter 8413 and fuel lubricating or cooling medium pumps for internal combustion piston engines are classified under sub-heading 8413-30. In pursuance thereto show cause notice bearing No. 144 dated 26.11.2018 was served upon the appellant denying the eligibility of the appellant to the benefits of exemption under notification No. 85/2004 and proposing the recovery of short paid BCD of Rs. 3,83,93,215/-. Simultaneously, the interest is prayed to be levied and the penalty is to be imposed. The said proposal has been confirmed vide the Order No. 02/2019 dated 04.02.2019 being aggrieved the appellant is before this Tribunal.

3. It is submitted on behalf of the appellant that there is no contravention of any provision of Customs Act or the Customs Tariff Act on part of the appellant, as alleged by the department. It is submitted that foremost it is important to understand the nature and functioning of the impugned goods (fuel pump unit assembly) which comprises of two items:

1. Pumps

2. Floaters

It is further submitted that these goods are placed inside the fuel tank of a two-wheeler and are specifically designed for use with spark ignition internal combustion engines of Yamaha. These pumps cannot be used with two-wheelers of other brands. The main function of these goods is to pump the fuel into cylinders of an engine so as to keep the engine running in smooth condition. The amount of fuel pump into the engine and the power generated is also patrolled by this pump. As such the impugned goods being, specifically, designed for use with internal combustion engine, it is nothing but the part thereof and as such has rightly been classified under chapter 8409 sub-heading 91-99. The order-under-challenge is alleged to have failed to appreciate that chapter heading 8409 talks about the

parts which are suitable for use, "solely or principally". The order-under-challenge is alleged erroneous and is prayed to be set aside, appeal is prayed to be allowed.

4. Per contra the order under challenge is being justified by the DR. It is submitted that as per the first rule of interpretation, the head-note of the chapter and the description of goods of each entry as provided in HSM code has to be the foremost criteria to classify the goods. Chapter 84 is about the nuclear reactors, boilers, machinery and mechanical appliances and the parts thereof. Description of goods for 8409 and 8413 in itself is sufficient to hold that the fuel pump unit assembly is specifically classifiable under 8413. It is alleged that the appellant has wrongly classified under 8409 may be to take the undue benefit of notification 85/2004. Impressing upon no infirmity in the order, appeal is prayed to be dismissed.

5. After hearing both the Parties, perusing the record and the order under challenge, I observe and hold as follows:

6. The appellant has imported fuel pump unit assembly, classifying the same under chapter heading 84099199. During the random check, the department formed an opinion that the goods imported are rather classifiable under chapter heading 84133090. Apparently, 54 bills of entry have already been cleared under the classification of 84099199 seeking an exemption of 50% BCD furtherance of notification 85/2004 denying the applicability of the said notification upon the appellant for the goods imported being classified under 8413 to which the notification is not applicable, that the benefit of exemption is denied and recovery to the extent of Rs. 38393215/- has been confirmed which has been challenged by the Appellant before us. Thus, it becomes clear that the controversy is about the classification of the impugned goods. For the purpose, foremost we need to look into the HSN code chapter 84 thereof.

A: As proposed by the department:

Section XVI

Machinery and mechanical appliances; electrical equipment; parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers; and parts and accessories of such articles.

Chapter 84

Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.

Tariff Item

Description of goods

Unit

Rate

8413

Pumps for liquids, whether or not fitted a measuring device: liquid elevators

8413 30

Fuel, lubricating or cooling medium pumps for internal combustion piston engines

8413 30 90

--- Other

Kg.

7.5%

B: As declared by the Importer in 54 :

Section XVI

Machinery and mechanical appliances; electrical equipment; parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers; and parts and accessories of such articles.

Chapter 84

Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.

Tariff Item

Description of goods

Unit

Rate

8409

Parts suitable for use solely or principally with the engines of heading 8407 or 8408.

8409 91

Suitable for use solely or principally with spark-ignition internal combustion piston engines.

8409 91 99

--- Other

Kg.

7.5%

7. No doubt, the fuel pump unit assembly of the appellant is meant to be used with the spark ignition internal combustion engine but admittedly it is such part which is rather a pump. It is the admission of the appellant that the impugned goods are responsible for pumping fuel into cylinders of an engine of two-wheelers while offering, control over the amount of fuel pumped into the engine and the power generator. Thus admittedly, this part of engine is a pump. Pumps are, specifically, classified under sub-heading 8413 as noted above.

8. A conjoint reading of description of goods for tariff item 8413 and 8409 makes it abundantly clear that all pumps meant for fuel lubricating or cooling medium for internal combustion piston engines are classified under 841330 and all other pumps for internal combustion piston engines for other than lubricating or cooling medium are classified under 84133090.

9. Thus, the tariff Act itself gives a clear cut distinction between a good which is merely a part or the part which can, specifically, be classified as a pump.

10. Now coming to the principles of classification of parts of machines of chapter 84, as contained in section note 2 to section 16 of the Customs Tariff, it provides as under:

2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules : (a) parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) 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 of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517; (c) all other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548.

11. It becomes clearer that the items which are specifically included in CTH 8413 are clearly excluded from CTH 8409 irrespective they are used solely or principally with the engines of heading 8407 and 8408.

12. Coming to Rule 1 of General Rules of Interpretation, we note that the classification has to be determined as per the heading and related section or chapter notes. The relevant extract is reproduced as follows:

"The titles of Section, Chapters and Sub-Chapters are provided for the ease of reference only; for legal proposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or notes do not otherwise require, according to the following provisions....."

13. From the entire above discussion, we are of clear opinion that fuel injecting pumps are neither an accessory nor the spare part of the engine of a motor vehicle. These pumps are classifiable only under heading 8413, the parts of these pumps are classifiable only under heading 841391.

14. We draw our support from the decision of this Tribunal in the case Monitor Enterprises Vs. Commissioner of Customs reported in 2001 (239) ELT 2017 wherein it was held that fuel injection pumps for ignition engine are excluded from heading 8409 as per explanatory notes volume 3 at page 1152 of the HSN explanatory notes.

15. Section note 2 clarifies that the parts which in themselves constitute an article those all have to be classified in their appropriate heading irrespective they are specifically designed to work as a part of a specific machine. The importance of HSN explanatory notes in the matters relating to classification has been time and again underlined holding that more reliance has to be placed on chapter notes and explanatory notes to HSN. We find no infirmity in the order under challenge when reliance is placed on the decision of CCE Hyderabad Vs. Bakelite Hyman Ltd reported as 1997(91) ELT 13 (SP).

16. In view of this opinion and in view of the fact, we observe that notification 85 of 2004 has no such entry which includes items of chapter 8413. We are of the firm opinion that the appellant has wrongly availed the benefit of exemption of 50% BCD of the products imported by him by wrongly classifying them as the parts solely and exclusively used with the engines ignoring the specific entry for classification of pumps. There is no denial that the goods which are classified by him as parts are

actually meant to function as pumps. Accordingly, we do not find any infirmity in the order-under-challenge. Finally, coming to the plea that the show cause notice is barred by time, we are of the opinion that :

17. In view of above discussion, it stands clear that the appellant has wrongly classified his goods classifiable under CTH 831330 intentionally under Customs Tariff Heading of 840991 with an intend to wrongly avail the benefit of exemption of 50% of BCD. It is worth taking a note of the fact that the bill of entry was filed under self-assessment regime and the importer need to be doubly sure that what they are claiming is legally correct.

18. We are of the opinion that department has committed no error while holding such an act on the part of the appellant as an intentional misrepresentation, which the section note 2 to section 16 of the Customs Tariff specifically provides a methodology of classification of pumps and parts of engines. In view entire discussion, we are of the opinion that classifying the product under a wrong entry continuously for as many as more than 50 bills of entry cannot be an act of ignorance. Hence, we hold that department has committed no error while invoking the extended period of limitation and, therefore, the show cause notice cannot be held to be barred by time.

19. Consequence to the above discussion, the order under challenge is hereby upheld. Appeal, accordingly, stands dismissed.