

COLLECTORS OF CUSTOMS, BOMBAY

A

v

M/S GRASIM INDUSTRIES LTD.

MAY 11, 2000

[S.P. BHARUCHA, S.S. MOHAMMED QUADRI AND  
SHIVARAJ V. PATIL, JJ.]

B

*Customs Tariff Act, 1975—Heading 84.17(1) and 68.01/16(1)—Classification under—Held, if the goods in question are machinery, plant and similar laboratory equipment or parts thereof, they fall within Chapter 84 of the Act; but if they are millstones, grindstones or other articles that fall within Chapter 68, they get excluded from Chapter 84—Import of four cases of hydrochloric acid synthesis unit of combustion chambers by the respondent—Classification of—Held, though the combustion chamber of the goods in question is made of graphite, the goods constitute a complete unit and an equipment and thus there can be no hesitation in holding that the goods in question fall within Heading 84.17(1).*

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D

**The respondent imported four cases of hydrochloric acid synthesis unit of combustion chambers and claimed that they are classifiable under Heading 84.17(1) of the Customs Tariff Act, 1975 being in the category of plants and machinery. The Assistant Collector of Customs rejected the claim and classified them under Heading 68.01/16(1) of the Act. In appeal, the Collector of Customs (Appeals) classified the same under Heading 84.17(1) of the Customs Tariff Act thereby upholding the claim of the respondent. The appellant appealed before the Customs Excise and Gold (Control) Appellate Tribunal which dismissed the appeal while confirming the order of the Collector of Customs (Appeals). Hence the present appeal.**

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F

**On behalf of the appellant, it was contended that the respondent imported parts of machinery which were articles of graphite falling within Heading 68.01/16(1) of the Act and as Note 1(a) of Chapter 84 of the Act specifically excluded articles falling within Chapter 68, they were wrongly held to be classifiable under Heading 84.17(1).**

G

**On behalf of the respondent, it was contended that plants and machinery fell within Heading 84.17(1) of the Customs Tariff Act, 1975 and not within**

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**A** Heading 68.01/16(1); that Note 1(a) to Chapter 84 had no application to machinery or part of machinery covered by Heading 84.17(1) of the Act.

Dismissing the appeal, this Court

**B** HELD : 1.1. Though the combustion chamber of the goods in question is made of graphite, they constitute a complete unit, consisting of three parts fitted with burners and other accessories forming part of synthesis unit of caustic soda plant and thus an equipment. In that equipment hydrogen is burnt with chlorine and thereby a new product - hydrochloric acid - is produced. In view of this categorical finding, there can be no hesitation in holding that the goods in question fall within Heading 84.17(1) of the Customs Tariff Act, 1975, unless it is shown they being millstones, grindstones and other articles falling within Chapter 68 have to be excluded from Heading 84.17(1) of the Customs Tariff Act in view of Note 1(a) of Chapter 84. Obviously the articles in question are not millstones, grindstones or the like. The contention that the goods in question fall within Chapter 68 has no substance.

**D** [266-F-G; 267-B-C]

1.2. A perusal of the title of Chapter 68 of the Customs Tariff Act and the description of the sub-heading shows that what is brought in thereunder are articles of stone plaster, cement, asbestos, mica or similar materials. There is no scope to bring within that Chapter machinery and mechanical appliances and parts thereof. The title of Chapter 84 of the Customs Tariff Act leaves no room for doubt that the goods falling within it are boilers, machinery, and mechanical appliances and parts thereof. The description and the sub-headings enumerate various categories of machinery and appliances falling thereunder. There can be no controversy about the proposition that if the goods in question are machinery, plant and similar laboratory equipment or parts thereof, they fall within Chapter 84 of the Act; but if they are millstones, grindstones or other articles that fall within Chapter 68 of the Act, they get excluded from Chapter 84. [268-C-D; 266-C-F]

**G** *Ballarpur Industries Ltd. v. Collector of Customs, Madras*, (1995) 75 E.L.T. 6 SC, relied on.

*Saurashtra Chemicals v. Collector of Customs*, (1997) 95 E.L.T. 455 SC, distinguished.

**H** *Saurashtra Chemicals, Porabandar v. Collector of Customs, Bombay*, (1986) 23 E.L.T. 283, CEGAT, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11388 of 1995. A

From the Judgment and Order dated 11.11.91 of the Central Excise Customs and Gold (Control) Appellate Tribunal, New Delhi in A. No. C/117/85-B2 in O. No. C/254/91-B2.

N.K. Bajpai, K.K. Dhawan and P. Parmeswaran for the Appellant. B

Joseph Vellapally, Ms. Shally Maggon, U.A. Rana and Rajesh Nair for M/s. Gagrath & Co. for the Respondent.

The Judgment of the Court was delivered by C

**SYED SHAH MOHAMMED QUADRI, J.** The short question that arises in this appeal is: whether hydrochloric acid synthesis unit of combustion chambers is classifiable under Heading 84.17(1) or Heading 68.01/16(1) of the Customs Tariff Act, 1975.

The appeal came up before us on reference by a Bench of two learned judges, taking the view that the decision of this Court in *Ballarpur Industries Ltd. v. Collector of Customs, Madras*, (1995) 75 E.L.T. 6 S.C. holding that a part of paper finishing machinery was classifiable under Heading 84.31 of Customs Tariff Act, 1975 (for short, 'the CTA') and not under Heading 68.01/16(1) of the CTA, is seemingly different from what is stated in *Saurashtra Chemicals v. Collector of Customs*, (1997) 95 E.L.T. 455 S.C. D E

The facts giving rise to this appeal fall in a short compass. The respondent imported four cases of hydrochloric acid synthesis unit of combustion chambers and claimed that they are classifiable under Heading 84.17(1) of the CTA. By order dated October 7, 1982, the Assistant Collector of Customs, Bombay, rejected the claim and classified them under Heading 68.01/16(1) of the CTA. The Collector of Customs (Appeals), Bombay, acceded to the contention of the respondent for their classification under Heading 84.17(1) of the CTA. The appellant appealed before the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi (for short, 'the CEGAT'). On November 11, 1991, the CEGAT confirmed the order of the Collector of Customs (Appeals) and dismissed the appeal. The appellant challenges the order of the CEGAT in this appeal. F G

Mr. N.K. Bajpai, learned counsel appearing for the appellant, has contended that the respondent imported parts of machinery which are articles H



fibre cement, or of mica; articles of vegetable materials agglomerated with mineral binders; mineral wools; expanded mineral materials; articles of other mineral substances, not elsewhere specified or included : A

(1) Not elsewhere specified 100% B

(2) Grinding stones, grinding wheels 40%  
and the like, of natural stone, of agglomerated natural or artificial abrasives, and segments or other finished parts of such stones and wheels but excluding hand polishing stones, whet stones, oil stones, and hones." C

A perusal of the title of Chapter 68 of the CTA and the description of the sub-heading shows that what is brought in thereunder are articles of stone, plaster, cement, asbestos, mica or similar materials. There is no scope to bring within that Chapter machinery and mechanical appliances and parts thereof. D

"CHAPTER 84

BOILERS, MACHINERY AND MECHANICAL APPLIANCES; PARTS THEREOF E

NOTES

1. This Chapter does not cover:

(a) millstones, grindstones and other articles falling within Chapter 68; F

2. to 5. \*\*\* \*\*\* \*\*\*

Heading No.	Sub-heading No. and description of article	Standard Rate of duty	Central Excise Tariff Item	G
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84.17 Machinery, Plant and similar laboratory equipment, whether or not electrically heated, for the treatment of materials by a process involving a change of temperature such as heating, cooking roasting, distilling, H

- A** rectifying sterilising, pasteurising steaming drying, evaporating, vaporising, condensing or cooling, not being machinery or plant of a kind used for domestic purposes; instantaneous or storage water-heaters, non electrical:
- B** 1. Not elsewhere specified 40%
2. Machinery and equipment for food and drink other than those used for treating milk, instantaneous or storage water-heaters, non-electrical; machinery and equipment imported for use in air conditioning.”
- C**

The title of Chapter 84 of the CTA leaves no room for doubt that the goods falling within it are boilers, machinery, and mechanical appliances and parts thereof. The description and the sub-headings enumerate various categories of machinery and appliances falling thereunder. At the beginning of the Chapter are Notes which specify what articles are excluded from that Chapter.

**D**

A reading of the Note 1(a) on which reliance is placed by Mr. Bajpai, suggests that it excludes millstones, grindstones and other articles falling within Chapter 68 from being classified under Heading 84.17(1) of the CTA.

**E**

There can be no controversy about the proposition that if the goods in question are machinery, plant and similar laboratory equipment or parts thereof, they fall within Chapter 84 of the CTA; but if they are millstones, grindstones or other articles that fall within Chapter 68 of the CTA, they get excluded from Chapter 84.

**F**

A perusal of the order of the Tribunal shows that though the combustion chamber of the goods in question is made of graphite, they constitute a complete unit, consisting of three parts fitted with burners and other accessories forming part of synthesis unit of caustic soda plant and thus an equipment.

**G**

In that equipment hydrogen is burnt with chlorine and thereby a new product - hydrochloric acid - is produced. In the latter part of the judgment the Tribunal recorded the following finding :

“Further there is no dispute that what they have imported is for combustion chambers and drawing also indicates that the combustion chamber consist of three parts, that is, upper shell, intermediary shell

**H**

and lower shell alongwith fittings. Based upon the records and functioning of the imported parts we are of the opinion that they constitute a complete unit".

In view of this categorical finding, there can be no hesitation in holding that the goods in question fall within Heading 84.17(1) of the CTA unless it is shown they being millstones, grindstones and other articles falling within Chapter 68 have to be excluded from Heading 84.17(1) of the CTA in view of Note 1(a) of Chapter 84. Obviously the articles in question are not millstones, grindstones or the like. We have carefully gone through various sub-headings of Chapter 68 of the CTA and we are of the view the contention that the goods in question fall within Chapter 68 has no substance.

In the case of *Saurashtra Chemicals, Porbandar* (supra), a larger Bench of the Tribunal by majority took the view that carbon rings and carbon seals which are used as spare parts in turbosets and compressors fall within the Heading 68.01/16(1) of the CTA and the minority held that they fall within Heading 84.65 of the *Customs Tariff Schedule*. The view of the majority was approved by this Court in *Saurashtra Chemicals'* case (supra). No reasons are given in that case. But a perusal of the order of the Tribunal shows the question there related to articles which were spare parts made of carbon and not to a complete unit or an equipment, unlike in the present case where the goods constitute a complete unit. Also, the goods here are not made entirely of graphite; only a part thereof is graphite. Further in *Saurashtra Chemicals'* case, there was agreement between the parties that those articles would fall both within Heading 68.01/16(1) as well as within Heading 84.65.

In *Ballarpur Industries Ltd.'s* case (supra), granite press rolls fitted with mild steel shafts and end-plates and its cavities filled with concrete were admitted to be a part of the paper finishing machinery. Disagreeing with the judgment of the Tribunal that parts of the machinery were classifiable under Chapter 68 of the CTA, this Court held that they were classifiable under Heading 84.31 of the CTA. The distinction between the *Saurashtra Chemicals'* case and the *Ballarpur Industries'* case is that in the former case the articles made of carbon were conceded to fall both within Heading 68.01/16(1) as well as within Heading 84.65 being spare parts of machines whereas in the latter case the goods were part of machinery not falling within Chapter 68 and were not made entirely of granite.

In the instant case, in view of the finding recorded by the Tribunal that

**A** the goods in question constitute a complete unit, an equipment, and are not made only of graphite they are clearly classifiable under Heading 84.17 (1) of the CTA. We, therefore, find no illegality in the order of the Tribunal. The appeal fails and it is accordingly dismissed with costs.

**B** M.P.

Appeal dismissed.