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COMPARATIVE ANALYSIS: WESTINGHOUSE SAXBY JUDGEMENT AND SHIROKI AUTO-COMPONENTS JUDGEMENT

- GARGI CHOUDHARI[1]

Abstract

To assign taxes to goods and commodity, most countries in the world adhere to the rules, standards, and regulations set by the Harmonized Nomenclature System. This system essentially classifies goods in different categorical slabs. When deciding the tax duty on even the smallest element of a commodity, this system plays a crucial role as the tax rates may very substantially, if the classification is improper. However, the Indian courts in recent times have delivered two judgements that thoroughly contradict each other when it comes to pragmatic approach to classification. This paper seeks to analyse two case laws namely Shiroki Auto Components India Pvt Limited v. Commissioner of Central Excise & ST and Westinghouse Saxby Farmer Ltd. vs Commissioner of Central Excise Calcutta in detail, while aiming to elucidate clarity regarding two different approaches.

Introduction

When goods and commodities are imported or exported, each traded item is entitled to a certain amount of indirect taxes in India. These taxes are decided according to a system that classifies goods universally under slabs of taxation rates. This universally accepted system is also the basis for how taxes are prescribed in the country. The appropriate classification of goods bears great importance because firstly, it decides the amount to be payable of given tax rate. And secondly, incorrect classification can result into obligation of paying unwarranted penalties. Despite the essential characteristic of accuracy, classification remains an inordinately disputed topic among traders and judicial authorities. Such arbitrary disputes demand that courts lay down judgements that will help resolve this discrepancy. However, the entire vehicle components manufacturing industry is currently under dilemma about

[1] Student at Savitribai Phule Pune University

changing classification stand because of two conflicting judgements. The judgements in two important cases – the Westinghouse Saxby case and Shiroki Auto-components case are absolutely contradictory judgements with regards to criteria for classification and the decisions have surely had a baffling impact on set principles of classification across industries. In this blog, we take a closer look at how these two judgments differ from one another.

The system that makes world-wide trading easier is called Harmonized System of Nomenclature (HSN). To understand the two judgements, is it first critical to comprehend how this system works.

The HSN System

Whenever commodities are traded, each commodity is individually taxable under certain set conditions. The Harmonized System of Nomenclature also known as Harmonized System (HS) is an internationally developed system which prescribes digit codes for nearly 5000 commodity groups. These are six-digit codes which enable the commodities and related tax percentage to be arranged in a universally accepted legal and unvarying manner. Currently, more than 200 countries exercise this methodology which contributes in expediting interchange of goods in a cost-effective way. The use of HSN system is subsequently followed by internal tax systems in most of the countries. The accurate classification of goods under Harmonized System of Nomenclature is to be done in according to the Explanatory Noted as provided by World Customs Organization; the organization responsible for the administration of the system, also vested with rights to amend the system as and when necessary. In India, for example, under Goods and Service Tax (GST), all goods transacted are classified under each of the HSN code, and an appropriate GST rate is fixed for the HSN Code. At the moment, GST rates have been ascertained in five distinct slabs, namely NIL, 5%, 12%, 18%, and 28%.[2]

Going further, following are the two cases that have had a perplexed effect on classification.

Shiroki Auto Components India Pvt Limited VERSUS Commissioner of Central Excise & ST, Ahmedabad on 29 July, 2020 (2020 (7) TMI 706)

[2] http://www.wcoomd.org/en/topics/nomenclature/overview/what-is-the-harmonized-system.aspx#:~:text=The%20Harmonized%20Commodity%20Description%20and,World%20Customs%20Organization%20(WCO), accessed 18.3.2022

Shiroki Auto Components Limited, a company based in Ahmedabad imported child parts from Japan which were then assembled to manufacture Round Recliner Assembly in India and then said Round Recliner Assembly had been dispatched to factory at Haryana where the recliner welding assembly was completed and thereafter it is was sent to Maruti factory where it was welded and fixed on the seat of motor vehicles.[3] The Central Excise department contended that child parts imported from Japan are to be catalogued under heading 8708 of CETH as parts and accessories motor vehicle, as against Shiroki's claim that the imported parts are parts of motor vehicle seats and classifiable under 9401 9000 of CETH as parts of seats (whether or not convertible into beds, and parts thereof). The judgement was delivered in favour of Central Excise department, with the adjudicating authority declaring that child parts are correctly classifiable under heading 8708. Shiroki Auto Components thus appealed against the order in Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench of Ahmadabad. The issue that laid before the two-judge bench was whether the child parts imported by the appellant is classifiable under CTH 94019000 as parts of vehicle seats as declared by the appellant or under CTH 87089900 as parts and accessories of motor vehicles of heading 8701 to 8705 as assessed by the Customs?[4] The bench, after reviewing CTH 94019000, CTH 87089900, CTH heading 8701 to 8705, HSN explanatory notes in respect of tariff item 8708 and general rules of interpretation discerned that child parts are accurately classifiable and well within the scope of CETH 9401 90 00 of Customs Tariff Act. CESTAT's previous order was thus upheld.

The judgement emphasised upon following grounds and considerations while deducing the decision:

1. Bench gave preference to nomenclature over principal use of product – which is one of the considerations for classification of goods under HSN system.
2. The judgement does not take into consideration the principal use of product.
3. Judges relied highly on Harmonized System of Nomenclature (HSN) Explanatory Notes Section XVII which covers CETH 8708, thereby deciding to prefer nomenclature over principal use.
4. The decision highly benefits the auto component industry in terms of Customs and GST slabs and rates.

[3] https://indiankanoon.org/doc/127376014/ accessed 18.3.2022
[4] Shiroki Auto Components India Pvt ... vs Ahmedabad on 29 July, 2020 (indiankanoon.org) accessed 19.3.2022

Westinghouse Saxby Farmer Ltd. vs Commissioner of Central Excise Calcutta on 8 March, 2021 CIVIL APPEAL NO.37 OF 2009

Westinghouse Saxby Farmers Limited is a company primarily engaged with the manufacturing of part of the Railway signalling system, known as 'Relays.' A 'Relay' is generally an electrically operated switch, used to control a circuit. They may also be used where several circuits must be controlled by one signal and even though essentially relays are electrical equipment, they may also form part of Railway signalling equipment.[5]

In 1993, Westinghouse Saxby contended that relays should classified under sub-heading 8608 and not under 8536 in the First Schedule to the Central Excise Tariff Act. The said contention was duly approved by the Central Excise authority. However, in 1996, the Central Board of Excise and Customs issued a circular suggesting that relays belonged to classification under the Chapter Heading 8536. Subsequently, the Assistant Commissioner of Central Excise issued nine different show cause-cum-demand notices to Westinghouse Saxby, inquiring to be shown causes as to why relays do not attract classification under Subheading 8536.90. The Commissioner also suggested for the differential duty to be collected together with the interest and penalty, imposed due to wrongly classified goods. The appellant gave reply to the show cause notices, contending that what was manufactured by them was supplied only to Railways as part of the signalling equipment and that, therefore, the show cause notices required to be dropped.[6] The show-cause notices were not dropped and heavy penalty was assigned by the Adjudicating Authority. Challenging that portion of the order of the Commissioner (Appeals) upholding the proposed classification and demanding differential duty, the appellant filed an appeal before CESTAT. The CESTAT dismissed the appeal and so, under Section 35L(b) of the Central Excise Act, 1944, Westinghouse Saxby appealed to the Hon'ble supreme Court.[7]

The Supreme Court bench consisting of three judges, namely CJI Sharad Bobde, A.S. Bopanna, and V Ramasubramanian had following one of the two issues before them:

[5] https://indiankanoon.org/doc/25691035/ accessed 18.3.22
[6] Ibid 4
[7] Supra

1. Whether the "Relays" used only as Railway signalling equipment would fall under Chapter 86, Tariff Item 8608 as claimed by the appellant or under Chapter 85 Tariff Item No.8536.90 as claimed by the Department?[8]

The bench led by CJI Bobde, after referring to Central Excise Tariff Act Chapter 85 and Chapter 86, Central Excise Act Section,1944: Sec 11A and Sec 35L(b) and various other provisions related to nomenclature, held that "Relays" manufactured and used only as railway signalling equipment fall under Chapter 86, Tariff Item 8608 and the appeal is allowed. The decision was thus in favour of Westinghouse Saxby Farmer Limited. The judgement emphasised upon following grounds and considerations while deducing the final decision on appeals:

1. Hon'ble SC held that General Rules of Interpretation are applicable only when classification can't be determined basis terms of heading and relevant section or chapter notes.
2. Completely neglects the classification based on nomenclature. Preference is given to principal use of product over the nomenclature.
3. Relies on the test of principal use of product. Note 3 of Section XVII of the CETA recognizes user test.
4. Explanatory Notes were not referred to by the Supreme Court in this case.
5. Highly benefits the railway component industry in terms of Customs and GST.

Concluding remarks

From the review and careful analysis of abovementioned cases and the approaches of courts, it is abundantly clear that the latter judgement completely contradicts the former. While the Shiroki judgement is extremely beneficial for auto-components industry, the Westinghouse judgement proves to be advantageous to the railway-component industry. However, the irreconcilable reasoning methodology and basis places the vehicle related commodity industry in a rather dilemmic situation regarding what is the proper way to classify goods under the adopted system. The question of what is to be given preferential treatment- nomenclature as basis or principal use as one, lingers in the grand scheme of things. In the near future, the clarity needs to be sought, hopefully with the constitutional courts delivering judgement that are consistent with each other and other precedents.

[8] Supra