

(2015) 11 SC CK 0016

SUPREME COURT OF INDIA

Case No: Civil Appeal No. 1642 of 2008

Commissioner of
Customs, Chennai

APPELLANT

Vs

Toyota Tsusho Pvt.
Ltd.

RESPONDENT

Date of Decision: Nov. 24, 2015

Citation: (2015) 326 ELT 638

Hon'ble Judges: A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench: Division Bench

Advocate: S/Shri V. Lakshmikumaran, M.P. Devanath, S. Vasudevan, Ms. L. Charanaya, Hemant Bajaj and Anandh K., Advocates, for the Respondent; S/Shri Yashank Adhyaru, Senior Advocate, Ms. Nisha Bagchi, Vikas Singh, Ms. Pooja Sharma and B. Krishna Prasad, Advocates, for the Appellant

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1.The respondent/assessee herein imported "beef leather cut pieces set TFC 235 Set" and mentioned the same at Serial Nos. 1 and 9 of the Bill of Entry dated 5-9-2005 which was filed by the assessee on the aforesaid import. The goods were classified under Customs Tariff Heading 4115 20 90 for which duty free exemption was claimed under Notification No. 21/2002 (Serial No. 149). The Department, after examining the goods, took the view that the aforesaid goods were classifiable under Chapter 42, namely Chapter Heading 4205 00 90 which attracted duty @ BCD 15% + CVD 16% + Education Cess 2% and levied a duty of Rs. 22,86,812/-. The Commissioner, in appeal, upheld the aforesaid classification arrived at by the Deputy Commissioner. However, the Customs, Excise and Service Tax Appellate Tribunal ("the Tribunal"), in further appeal carried by the assessee, accepted the said appeal and classified the goods under Chapter Heading 4115 20 90 as "beef leather cut pieces set - TFC 235 set".

2. We have gone through the aforesaid two entries which read as under :

4115	Composition leather with a basis of leather or leather fiber in slabs, sheets or strip, whether or not in rolls; parings and other waste of leather or of composition leather, not suitable for the manufacture of leather articles; leather dust, powder and flour	-	-
4115 10 00	Composition leather with a basis of leather or leather fiber, in slabs, sheets or strip, whether or not in rolls.	Kg.	15%
4115 20	Parings and other waste of leather or of composition leather, not suitable for the manufacture of leather articles; leather dust, powder and flour.	-	-
4115 20 10	Cuttings of leather	Kg.	15%
4115 20 90	Other		
4205	Other articles of leather or of composition leather	-	-
4205 00	Other articles of leather or of composition leather	-	-
	Straps other than for machinery or harness	-	-
4205 00 11	Welt	Kg.	15%
4205 00 19	Other	Kg.	15%

4205

00

20

Leather sofa cover

Kg. 15%

4205

00

90

Other

Kg. 15%

3. During the course of arguments, we were shown two other Chapter headings viz. Chapter 87 and Chapter 97. Chapter 87 deals with "vehicles other than Railway or Tramway Rolling-stock and includes other parts and accessories of the motor vehicles". Likewise, Chapter 94 have the following nomenclature:

"Seats (other than those of heading 9402) whether or not convertible into beds, and parts thereof".

4. Sub-heading 9401.20.00 thereof deals with "seats of a kind used for motor vehicles and sub-heading 9401 90 00 mentions "parts" thereof.

5. We, thus, feel that it would have been more appropriate for the Tribunal to look into the aforesaid Chapter entries as a whole and then come to a definite conclusion, in the light of the description of the goods involved as to which the most appropriate entry under which they fall.

6. Accordingly, we set aside the impugned order, allow the appeal and remit the case back to the Tribunal to decide the aforesaid entries in the manner indicated.

7. Having regard to the fact that it is an old issue, we would appreciate if the appeal is decided within six months from date of the receipt of the copy of this order.