

CASE NO.:
Appeal (civil) 6980-6983 of 2004

PETITIONER:
M/s O.K. Play (India) Ltd.

RESPONDENT:
Comm.of Central Excise, Delhi-III, Gurgaon

DATE OF JUDGMENT: 03/02/2005

BENCH:
S.N. VARIAVA, Dr. AR. LAKSHMANAN & S.H. KAPADIA

JUDGMENT:
J U D G M E N T
WITH

CIVIL APPEAL Nos. 6776-6779 OF 2004

Commissioner of Central Excise,
Delhi-III, Gurgaon

\005

Appellant

Versus

M/s O.K. Play (India) Ltd.

\005

Respondent

KAPADIA, J.

The short question which arises for determination in these Civil Appeals filed by the assessee and by the department, respectively, under Section 35L(b) of the Central Excise Act, 1944, is \026 whether the assessee was right in classifying the following articles under Chapter Heading 95.03 and clearing the same without payment of duty. The said articles are Activity Desks and Chairs, Fun Fliers, Play Table, Play Pool, Rockers, Slides and Swings.

The assessee is engaged in the manufacture of toys. On 24th April 1987, a team of officers from Anti Evasion Branch of the Delhi Commissionerate visited the factory premises of the assessee situate at Gurgaon, Haryana, when they found that the assessee was manufacturing the above articles with the help of machines and which were being cleared without payment of duty.

On 4th November, 1997, a show-cause notice was issued to the assessee alleging mis-declaration in the classification list by prefixing and suffixing each of the above items with the words "baby" and "toys" respectively. Consequently, "Activity Desks and Chairs" were described as "Baby Chair Toy" and "Baby Desk Toy"; Rockers were described as "Baby Rocker Toy"; Slides were described as "Baby Slide Toy". According to the department, the said prefix and suffix was inserted to each of the above articles to mislead the department into believing that each article was a toy. Hence, the department sought to recover duty for the period from 1.4.1992 to 28.2.1997 by invoking the proviso to section 11A(1) of the Central Excise Act, 1944 (hereinafter referred to for the sake of brevity as "the 1944 Act"). According to the department, the said items were classifiable under Chapter Headings 95.06,

94.01, 94.03 and 39.22 and, therefore, chargeable to duty.

The basic question which arises for determination in these Civil Appeals is whether the aforesaid seven articles are "toys" classifiable under Tariff Heading 95.03 as claimed by the assessee?

For the sake of clarity, since classification of seven articles is in issue, we have divided this judgment into three categories.

Before dealing with the issue of classification, certain points are required to be clarified.

In the case of A. Nagaraju Brothers v. State of Andhra Pradesh reported in [1994 (72) ELT 801], it has been held by this Court that no one single universal test can be applied for correct classification. There cannot be a static parameter for correct classification.

Further, the scheme of the Central Excise Tariff is based on Harmonized System of Nomenclature (for short "HSN") and the explanatory notes thereto. Therefore, HSN along with the explanatory notes provide a safe guide for interpretation of an Entry.

Further, equal importance is required to be given to the Rules of Interpretation of the Excise Tariff. Under rule 3(a), it is provided that the heading which provides a specific description shall be preferred to a heading having a more general description. For example, in the case of "toys" referred to in the HSN Heading and the Tariff Heading, the description refers to reduced size model of an Article used by adults. This test helps us to understand the difference between "toys" and "furniture".

Lastly, it is important to bear in mind that functional utility, design, shape and predominant usage have also got to be taken into account while determining the classification of an item.

The aforesaid aids and assistance are more important than the names used in the trade or common parlance in the matter of correct classification.

A) CLASSIFICATION OF PLAY TABLE, TABLES, ACTIVITY DESKS AND CHAIRS.

The assessee has classified the above articles under Tariff Heading 95.03, whereas the revenue has classified the same under Tariff Headings 94.01 and 94.03, which read as follows:-

Heading No.

Description of Goods

Rate of

Duty

94.01

Seats (other than those of heading No.94.02), whether or not convertible into beds, and parts thereof.

20%

94.03

Other furniture and parts thereof.

20%

95.03
Other toys; reduced-size ("scale")
models and similar recreational
models, working or not; puzzles of all
kinds.
15%

Mr. S. Ganesh, learned senior counsel appearing on behalf of the assessee submitted that "Activity Desks and Chairs" were specifically designed for amusement of small children. He submitted that the said Desk has a slate with a removable desk top with twin wells for crayons, toys, books etc. The children can even draw or learn the basics of writing on this table. Similarly, the play table is designed for group play. These articles were aids for the play of small children. They were bought and sold in the market as toys. They were exclusively available in toy shops and not in furniture shops. It was submitted that the usage and commercial parlance show that the articles were toys classifiable under Tariff Heading 95.03 as toys. In this connection, reliance was placed on the Certificates obtained from Toys Association of India and from Sports Goods Export Promotion Council, letters from various distributors and catalogues of various international manufacturers and rotational moulding association. It was submitted that the department has not adduced any evidence to show that in commercial parlance, these articles are not known as toys. Reference was also made to Note-1 under Chapter 94 to show that the said chapter did not cover the toy furniture. According to the assessee, toy furniture has not to be understood as furniture under Chapter 94 but should be excluded therefrom as a toy furniture was specifically designed for play and amusement of children. It was also not synonymous with doll furniture. These articles, according to the assessee, were aids for play and, therefore, classifiable under Heading 95.03. Reliance was also placed on the product catalogue to show the shape, colour and size of these articles indicating that they were toys and not furniture.

Per contra, Mr. Rajiv Dutta, learned senior counsel appearing on behalf of the department submitted that the mere fact that an article was meant for exclusive use of children would not place that article in the category of toys. Baby chairs, desks and tables were used predominantly by children to sit on and write on. They were smaller versions of tables and chairs used by adults and, therefore, rightly classified as furniture under Headings 94.01 and 94.03. He submitted that what was excluded from Chapter 94 was doll's furniture. In this connection, reliance was placed on Note (A)(12) of HSN Heading 95.03 which refers to Dolls' houses and furniture including bedding. It is this type of furniture that can be treated as toy furniture which is excluded from Chapter 94. Reliance was also placed on the note to HSN Heading 94.01 which refers to different types of chairs like infant's chair, children's seat etc. Therefore, according to the department, the aforesaid articles were classifiable under Headings 94.01 and 94.03.

We are inclined to agree with the department. The mere fact that an article is meant for exclusive use of children would not place it in the category of toys. The word "toys" is not defined. However, Tariff Heading 95.03 describes "toys" as

reduced-size models and similar recreational. This tariff heading is identical to HSN Heading 95.03 which also refers to "toys" as reduced-size models. Both the headings describe "toys" as representing animals or non-human objects. They refer to toy musical instruments, apparatus, appliances etc. Heading 95.03 is a residuary item. It covers Doll houses and furniture. Under the explanatory notes to HSN Heading 95.03, reference is made to toys like sewing machines, musical instruments etc. distinguishable by their size and limited capacity from real sewing machine, musical instrument etc. Similarly, under the explanatory Note (B) to HSN Heading 95.03, reduced-size model includes models of aircraft, trains etc. which are reproductions of Articles. It is important to note that Section XX of the Central Excise Tariff Act, 1985 (hereinafter referred to for the sake of brevity as "the 1985 Act") covers Chapters Nos.94, 95 and 96 under the caption "Miscellaneous Manufactured Articles". Chapter 94 deals with Furniture. Chapter Note 1(k) excludes toy furniture or toy lamps from Chapter 94. Chapter Note 2 refers to the articles of furniture, falling in Chapter 94, subject to the condition that they are for placing on the floor or ground. Tariff Heading 94.01 refers to Seats. Further, the HSN Heading 94.03, which is similar to Tariff Heading 94.03, refers to any movable article which can be placed on the floor and mainly used in dwelling house, schools, cafes etc. as furniture. It covers desks, chairs etc. Basically, toys, as indicated by HSN Heading, are miniature reproduction of the articles used by the adults, like, furniture, musical instruments etc.

In the light of what is stated above, we are of the view that play tables, activity desk etc., enumerated above, are more akin to furniture under Headings 94.01 and 94.03 than toys under Heading 95.03.

In Corpus Juris Secundum, Volume 37 at page 1412, the word "furniture" is defined as under:-

"A comprehensive term of very broad meaning and general application whose meaning changes so as to take the colour of, or be in accord with, the subject to which it is applied. It has been variously defined as meaning anything which furnishes or equips; a supply of necessary, convenient or ornamental articles, for any business or residence, or with which a residence is supplied, equipment, outfit, supplies, that which fits or equips for use or action, that which fits or supplies a house for use or which furnishes or is added to the interior of a house for use or convenience; that with which anything is fitted, out, furnished, or supplied, that with which anything is furnished or supplied for use, those movables required for use or ornament in a dwelling, a place of business or of assembly; those readily movable articles which would be serviceable generally as household furniture without any special reference to a particular building. It is not confined in its meaning to such things as are necessities to a family, but embraces about everything with which a house or anything else is or can be furnished. The term ordinarily relates to movables chattel; personal chattels in the use of a family and applies to all personal chattels which may contribute to the use or convenience of the house-holder or the ornament "of the house". "Furniture" is not generally included by the term "fittings"."

According to Concise Oxford Dictionary, "toy" is an object for a child to play with. It is a model or a miniature of something.

According to Encyclopedia Americana, a "toy" is a trifle. It is a thing of little or no value. It is a play thing. It has no practical use.

According to Oxford Classical Dictionary, a Doll's house furniture is a "toy".

According to Random House Dictionary, a "toy" is an object. It is a small representation of something familiar to the child such as an animal an object, person etc. It is something diminutive.

According to Collins Cobuild Dictionary, a "toy" is an object that the children play with, for example, a doll or a model car or an air-craft.

In the circumstances, we hold that play table, activity desks and chairs constitute "furniture" in terms of Tariff Heading 94.01/94.03.

B) CLASSIFICATION OF "SWINGS, SLIDES, FUN FLIERS AND ROCKERS".

The next question which arises for determination is whether the above items are "toys" under Tariff Heading 95.03, as contended by the assessee; or whether they are equipments for general physical exercise, gymnastics and athletics, as submitted on behalf of the department.

To decide the above controversy, we quote hereinbelow Tariff Headings 95.03 and 95.06:

Heading No.

Description of Goods

Rate of

Duty

95.03

Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds.

15%

95.06

Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or out-door games, not specified or included elsewhere in this Chapter.

15%

As stated above, Tariff Heading and HSN Heading 95.03 describe "toys" as reduced-size models. Toys are miniature replica of articles used by adults. Tariff Heading 95.06 is similar to HSN Heading 95.06. According to explanatory notes to HSN Heading 95.06, equipments for exercise etc. are parallel bars, rings, trapeze etc. The said note excludes toys under Heading 95.03. However, it covers swings, slides etc. used in the playground. Therefore, on a bare reading of these

explanatory notes, we find that the articles in question are not equipments for general physical exercise. They are toys under Tariff Heading 95.03.

In Black's Law Dictionary, the word "equipment" is defined to mean an article or implement used for a specific purpose or activity.

In Random House Dictionary, an "equipment" is defined as an article used for gaining skill.

According to Collins Cobuild Dictionary, "equipment" is a thing which is used for a particular purpose.

Applying the above tests, we hold that the purpose of reduced size models of slides, swings etc. is amusement and not physical exercise. The Tribunal was, therefore, right in classifying these items under Tariff Heading 95.03.

C) CLASSIFICATION OF PLAY POOL

In this case the Adjudicating Authority had classified "Play Pool" as "Baths" under Tariff Heading 39.22, as against the claim of the assessee that "Play Pool" was a toy under Tariff Heading 95.03. The Tribunal, however, held that "Play Pool" was neither a toy under Heading 95.03 nor did it fall in category of "Baths" under Heading 39.22. The Tribunal classified it under Heading 39.22, against which the department has not come in appeal.

We quote hereinbelow the aforestated Tariff Headings 39.22, 39.26 and 95.03:

Heading No.

Description of Goods

39.22

Baths, shower-baths, wash-basins, bidets, lavatory pans, seats and covers, flushing cisterns and similar sanitary-ware, of plastics

39.26

Other articles of plastics and articles of other materials of heading Nos.39.01 to 39.14

95.03

Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds.

In the present case the evidence on record indicates that the "Play Pool" has a diameter of 5 ft.; it has a depth of 2.5 ft.; it has steps to go down; it has a seat and a slide. Its water carrying capacity is 1000 to 1500 litres. During summer, children can take a cool dip in it. During winter, it can be used as a play-pen. Adults can also sit in it.

In view of the above specifications, "Play Pool" cannot be said to be a toy under Tariff Heading 95.03. Further, in the explanatory notes to HSN Heading 39.22, it is clarified that "Baths" in the said heading would cover baby baths and camping toilets. Therefore, in our view, the department was right in classifying "Play Pool" as "Baths" under Heading 39.22.

We would have remanded the matter to the Tribunal, if there was any ambiguity about the classification of "Play Pool" under Tariff Heading 39.22. However, we are not inclined to remit the matter as the item stands fully covered by the explanatory notes to HSN Heading 39.22. Moreover, at the

stage of show-cause, full opportunity was given to the assessee to disprove that it was not falling under Heading 39.22. On the facts and circumstances of this case and without going into the question as to what course the department should follow when the Tribunal classifies the item in a different category, we hold that the Adjudicating Authority was right in classifying "Play Pool" under Tariff Heading 39.22.

On the question of limitation, it may be stated that one of the show-cause notices is dated 4.11.1997 claiming duty from the assessee for the period commencing from 1992-93 to 28.2.1997. By the impugned judgment, the Tribunal came to the conclusion that the assessee had filed its classification list giving exact description of the goods; that all the relevant features of the products manufactured were available with the department; that it was for the officers of the department to conduct further examination to see whether the classification given by the assessee was correct or not and, therefore, the department was not entitled to invoke larger period of limitation. Consequently, the Tribunal directed the department to drop the proceedings pursuant to show-cause notice dated 4.11.1997.

Being aggrieved, the department has come to this Court by way of Civil Appeal Nos.6776-6779 of 2004. We do not find any infirmity in the decision of the Tribunal. The classification list was filed as far back as on 22nd October, 1992. Under the said list, the goods were declared as "Baby Slide Toy", "Baby Chair Toy", "Baby Rocker Toy" etc. The said list was approved without enquiry by the department on the description of the product. The department did not call for the product catalogue during the aforesaid period till February, 1997. According to the impugned show-cause notice dated 4.11.1997, the product catalogue described the above items as "Rockers, Slides, Swings" and not as "Baby Rocker Toy, Baby Slide Toy" etc. According to the department, on reading of the product catalogue with the classification list, it becomes clear that the word "Baby" has been deliberately prefixed and the word "toy" has been wilfully suffixed to the "Rockers, Slides, Swings" etc. in order to mislead the department into believing that the said products were toys.

We do not find any merit in these arguments. Nothing prevented the department from calling upon the assessee over the years to produce their catalogues. The classification lists were duly approved by the department from time to time. All the facts were known to the department, whose officers had visited the factory of the assessee on at least 12 occasions. In the circumstances, we do not find any infirmity in the reasoning given by the Tribunal in coming to the conclusion that there was no wilful suppression on the part of the assessee enabling the department to invoke the extended period of limitation under the proviso to section 11A(1) of the 1944 Act. However, we may clarify that the show-cause notices dated 24.6.1997, 27.5.1998, 15.10.1998, 31.3.1998 and 30.9.1999 are in time as held by the Tribunal.

Subject to what is stated hereinabove regarding classification of "Play Pool" under Tariff Heading 39.22, we do not find any infirmity in the impugned judgment of the Tribunal. Hence, the Civil Appeals filed by the assessee and the cross-appeals filed by the department are dismissed. However, in the facts and circumstances of this case, there will be no order as to costs.

JUDIS