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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-19-1996

Appellant : itc Ltd.

Respondent : Collector of Customs

Judgement :

1. This is an appeal against the order of Collector (Appeals), Madras dated 3-9-1986.
2. The Id. Counsel stated that the appellants imported tobacco cutting machine and claimed its classification under Heading 84.59(2). The Department however, classified it under Heading 84.59(1). They cleared the goods under protest and subsequently filed a refund claim. The Assistant Collector's order was upheld by the Collector (Appeals) in view of his interpretation of Heading 84.59(1). However it was there submission that he had erred in doing so.
3. The Heading 84.59 as it stood during the relevant period reads as follows: "84.59 Machines and mechanical appliances, having individual functions, not falling within any other heading of this Chapter : (2) Machines and mechanical appliances designed for the production of a commodity, machinery for treating metals wood or similar materials, for stripping and cutting of tobacco leaf or for cutting or rolling tea leaves; machines for mounting card clothing; nuclear reactors." 4. The department's contention is that the only a machine capable of both stripping and cutting tobacco leaf was covered by Heading 84.59(2) but in view of the word 'and' between the words 'stripping' and 'cutting'. It was however,

their contention that stripping and cutting are two different processes separated in space and time and different machines are required for these two purposes. They have filed a booklet titled the 'Mechanical Tobacco Processing' by Korber (Exhibit I) 1983 edition. This pamphlet shows the photograph and specification of tobacco cutters of the type imported by them and the design and operation of such cutters.

5. They had also produced before the authorities a certificate of Tobacco Board of India and Tobacco Advisory Council of London showing that stripping and cutting operation for tobacco leaf could be done only by separate machines and it is not possible for a single machine to perform these functions.

6. Actually the process of stripping takes place at the initial stage before processing of raw tobacco leaf whereas the process of cutting of the same by the KTC machine is only after the stripped tobacco is blended and flavoured with various chemicals. They had also forwarded to the authorities below two brochures to show that cutting and stripping are different functions and these operations are performed by different machines.

7. It was also their contention that the Tribunal has in the case of United Electrical Industries Ltd., Quilon v. C.C., Bombay [1983 (13) E.L.T. 991 (Tribunal)] indicated where 'and' can be read as 'or' or 'or' as 'and'.

8. In the present case, therefore, the relevant Clause 84.59(2) has to be so read as to mean that it covers a stripping machine and also a cutting machine that is a machine which can perform any one of these two functions.

9. The Id. DR drew attention to the impugned order and reiterated the department's view as contained therein. He emphasised that the relevant clause of the tariff heading mentions 'machines for stripping and cutting for tobacco leaf and therefore, only a machine capable of performing both the functions could be classified under this sub-heading.

10. In response to the Bench queries, he could not show any case law or other material in support of the above contention. He also could not show any technical or other material to indicate that the description of the processing of tobacco as

explained by the Id. Counsel was in any way erroneous or incorrect. He had, in fact nothing to say on the face of the certificate of the Tobacco Board, Guntur dated 11-9-1985 and the pamphlet Mechanical Tobacco Processing as also the case-law cited by the Id. Counsel.

11. I have considered the above submissions. I observe that the Id.

Counsel's arguments have a lot of force.

12. The Id. Counsel is correct in pointing out that stripping tobacco leaves and cutting them for further processing are separated in space and time.

13. The Certificate of Tobacco Board of India, Guntur dated 11-9-1985 clearly indicates that at the relevant time, there was no machine which could perform stripping of tobacco and cutting of tobacco simultaneously in tobacco industry (Ex.'G') as evident from the following :- "There is no machine which can perform stripping of tobacco and cutting of tobacco simultaneously in tobacco industry. Stripping of tobacco means removing of mid-rib (stems), this is usually done by manual operation or by threshers. Cutting of tobacco is done either after removal of the mid-rib or as a full tobacco and cutting operations are done by separate machines." 14. Korber's pamphlet on Mechanical Tobacco Processing indicates the details mentioned by the Id. Counsel, however, it has no direct bearing on the issue before us since there is no dispute that the imported machine is a tobacco cutting machine and the only question before us whether it is covered by Tariff Heading 84.59(2). The crucial clause in sub-heading reads as follows : "Machines and mechanical appliances designed for..."stripping and cutting of tobacco leaf."

15. Since during the relevant period, there was no such machine which could perform both the functions simultaneously as certified by the Tobacco Board of India. We have to keep this technical position in view and the Tribunal's observation in the case of United Electrical Industries Ltd., Quilon supra which are as follows : "4. We have given our careful consideration to the matter. It is by now well settled that an interpretation which makes a piece of legislation meaningless has to be discarded. We have heard the Department's representative often repeating the well-known dictum of our Supreme Court that grammar is a good guide to meaning but is a bad master to dictate. We find further that the book

'Words and Phrases Legally Defined', Volume 4, states on the strength of Australian authorities that 'if the general scheme of an Act of Parliament obviously calls for 'and' to be read as 'or' or 'or' as 'and', the Court free to take the very important step of altering the verbiage of that Act.' We find also that Section 13 of the General Clauses Act, 1897 provides that in all Central Acts and Regulations, unless there is anything repugnant in the subject or context, words in the singular shall include the plural, and vice versa. In the light of these authorities and provision, there could be no objection to the word 'and' in the original entry 58 being read as 'or' or the word 'machine' in the same entry being read as 'machines' if these variations can give a reasonable meaning to the entry. By so doing, the entry covered an aytinatuc machine which could perform one or more of the functions enumerated in the entry." 16. In the Maxwell on the 'interpretation of statutes'; also it is mentioned as follows : "In ordinary usage, "and" is conjunctive and "or" disjunctive. But to carry out the intention of the legislature it may be necessary to read "and" in place of the conjunction "or" and vice versa." 17. In view of the above position, I consider that the relevant clause of 84.59(2) has to be so interpreted as to make it meaningful and when so read it could only mean that a machine capable of either stripping or cutting of tobacco leaf would be covered by this clause. Hence I hold that the imported item is classifiable under Heading 84.59(2).

Therefore, I set aside the impugned order and accept the appeal as already pronounced in the open Court.

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