Reliance Industries Ltd. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-10-1996

Reported in : (1997)(71)LC146Tri(Mum.)bai

Judge : S Peeran, K D Shiben

Appellant : Reliance Industries Ltd.

Respondent : Cc

Judgement :

1. This appeal is directed against order of Collector of Customs (Appeals) No. 2752/BCH dt. 18.7.1988.

2. The Appellants imported 4 nozzle printing heads and spares for the on line printing system. The Appellants have an Automatic bale marking device installed as an integral part of Cut-Bale area of the plant. The Bales are transported to the scale conveyor for weighing and final identification. Bale numbers and weight are automatically applied using a Mathews "Jet-A-Mark" Model 1104 Alpha Numerical Non-contact Marking System. This Jet-A-Mark/printing system is for line printing at conveyor speed. It was contended before us that this Jet-A-Mark is called Alphanumeric Non Contact Marking System since it is capable of marking both alphabets and numerals by spraying a jet of special type of ink on the bales through certain nozzles in the printing head without actually coming into contact with the bales. Assistant Collector in his order held that goods were classifiable under Chapter heading 85.43 by virtue of which these impugned goods as parts

would be classifiable under C.T.H. 98.06 read with Notification No. 68/87 dt.

1.3.1987. Collector (Appeals) while upholding classification under heading 85.43 and holding also that these are not eligible for the benefit under notification No. 69/87 dt. 1.3.1987 however, held that since goods do not contain any semi-conductor device and do form part of computer system they would not fall under S. No. 610 of Appendix 3A of import policy. The order of the Assistant Collector in regard to the I.T.C. violation therefore were set aside. Personal penalty of Rs. 15,000/- on appellants was also set aside. Appeal in respect of benefit of notification No. 69/87 dt. 1.3.1987 was however rejected.

3. Arguing for the Appellants the Ld. Counsels submitted that C.T.H.84.22 under which they claimed assessment includes machinery for filling, closing, selling, capsuling or labelling bottles, cans, Boxes or other containers, other packing or wrapping machinery. HSN note at page 1184 and 1185 specifically include under these headings machines of different types for packing goods for sale, transport or storage and baling. Labelling machines are parts of such machines and are covered by heading 84.22.90 84.22 excluding 84.22.11 is included in column (2) of the table to Notification No. 69/87-Cus. dt. 1.3.1987 and hence the parts are eligible for the benefit of the Notification. In any case, heading 85.43 would cover purely electrical machines and apparatus such as signal generators, machines and apparatus for electroplating, electrolysis or electrophoresis and other machines and apparatus. The only other competing entry, the Ld. Counsel submitted was heading 84.43 which includes printing machinery and machines for use ancillary to printing. The heading 84.22 would be appropriate heading since these are parts of packing machines with printing as an ancillary function.

In any case Collector (Appeals) has passed non-speaking order and not recorded any findings on the pleas made by them. While recording that lower authorities have classified the item under heading 85.43 as electronic or electrical device held that machine does not become classifiable just because "it operates electrically or electronically." While considering the classification under heading 84.22 he has ruled out this item without examining the classification in the light of HSN note and actual functions performed by the machine.

4. Arguing for the Revenue Ld. DR while reiterating the departmental arguments submitted that conditions for classification under alternate chapter heading 84.43 are not satisfied and further that these cannot be called as parts of baling machines.

5. We have heard both sides. From the literature placed in the file at page 22 it is seen that: The Jet-A-Mark 1104 unit is an alphanumeric non-contact marking system. It can be used for marking date codes, item numbers, be codes, time, sequential numbering, and other information.

The Jet-A-Mark 1104 unit consists of an electronic control unit, one to four print heads, a keyboard for entering alphanumeric information one or more photoelectric units to signal the print heads to print.

The print heads are equipped with either seven nozzles or sixteen nozzles which propel drops of ink onto the object to be marked. This system allows marking without contact between the print head and the object. The print heads can be tilted to allow for reduction of size of the printed characters. The printer can have upto four seven-nozzle print heads or two sixteen-nozzle print heads or two seven-nozzle print heads.

Each print head can be triggered independently with its own photoelectric unit, or the print heads can be triggered simultaneously with a single photoelectric unit. In case of fuse on a conveyor whose speed varies or which might stop during printing, an external techometer can be used to control the print heads and give uniform printing.

6. The system specialist who had examined the goods had opined that the Nozzle heads do not contain any semi-conductor device and do not form part of the computer system. These seemed to be part of print head used in market system. Collector (Appeals) has recorded that the goods in question are parts of bale printing system of on line printing and are parts of bale conveying weighing system. The only ground he has rejected the claim is that 84.22 covers labelling machines which also prints but the machine in question is not labelling machine but bale printing machine. It does not print label or does the work of labelling. The

machine therefore would fall under heading 85.43 only.

The Collector has not given any finding in regard to explanatory notes for classification of such goods.

7. He has also examined the claim under competing head 84.43 raised by the appellants. In this view of this matter we are of the opinion that since alternate plea relating to classification can always be made at the appellate stage, this matter would have to go back by way of remand for de novo decision after considering the competing entries 84.22, 85.43 and 84.43.

8. We, therefore, set aside the impugned order and remand the matter to Commissioner of Customs (Appeals) for considering the claim under competing entries as aforesaid and pass order in accordance with law and after observing principles of natural justice.