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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-10-1997

Reported in : (1998)(97)ELT96TriDel

Appellant : Collector of Customs

Respondent : Moi Engineering Ltd.

Judgement :

1. This is an appeal filed by the Revenue. The issue for our consideration is whether the machine imported by the respondents M/s.

MOI Engineering Ltd. was eligible for the benefit of concessional rate of customs duty under Notification No. 125/86-Cus., dated 17-2-1986, as amended. The goods described in the Bill of Entry were Horizontal Form, Fill and Seal Machine. It is seen that subsequently the description was changed to High Speed Automatic Wrapping Machine. The Assistant Collector of Customs, Bombay observed that the said machine was Horizontal Form, Fill and Seal Machine and it was not a simple wrapping machine. He disallowed the benefit of Notification No. 125/86-Cus.

referred to above. On appeal, Collector of Customs (Appeals), Bombay on the basis of the evidence produced before him held that the impugned machine was a High Speed Automatic Wrapping Machine for use in processing/packaging of food articles, (biscuits in the present case) and was accordingly eligible for benefit of Notification No.125/86-Cus. In Appeal, the Revenue had pleaded that the machine imported was a Horizontal Form, Fill and Seal Machine and could not be treated as High Speed Wrapping Machine and was accordingly ineligible to duty benefit under Notification No. 125/86-Cus. It had also been mentioned that the benefit under Serial No. 17 of the table annexed to the Notification No. 125/86-Cus. was available to the Form, Fill and Seal Machines for flexible packaging materials with either vacuumising or inert gas flushing or both and that the machine was not having these other functions. It has also been contended that the machine was not complete as it was imported without control panel and thus the benefit of Notification No. 125/86-Cus. was not available.

2. We have heard Shri A.K. Agarwal, SDR for the appellant and Shri M.Venkataraman, Advocate for the respondents. We have carefully considered the submissions made by both the sides and have gone through the facts on record.

3. Under exemption Notification No. 125/86-Cus., among others, the Form, Fill and Seal Machine for flexible packaging materials with either vacuumising or inert gas flushing or both was eligible for the concessional rate of customs duty against Serial No. 17 of the table annexed to that Notification. Against No. 29 of the said table, High Speed Automatic Wrappers other than cigarette pack wrappers were covered. We find that the Assistant Collector of Customs had observed that the machine imported was a complete machine, although control panel of the machine had not been supplied by the suppliers. He had held that the machine imported was a Form, Fill and Seal Machine. After coming to a decision that it was a Form, Fill and Seal Machine, he had not discussed whether the machine imported was covered by Serial No. 17 of the table annexed to that Notification and on the ground that the machine imported was not a wrapping machine, he had disallowed the benefit of Notification No. 125/86-Cus., dated 17-2-1986. The Collector of Customs (Appeals) on the basis of the evidence placed before him had held that the machine imported was a High Speed Automatic Wrapper.

4. We find from the catalogue of the machine which had been produced before the lower authorities that the machine had been described as AP 400 Alpha Horizonal Wrapping Machine. In the Bill of Entry the goods had been classified under sub-heading 8422.40 which related to the other packing or wrapping machinery. Under

sub-heading 8422.30 machinery for filling, closing, sealing, capsuling or labelling bottles, cans, boxes, bags or other containers; machinery for aerating beverages were covered. From the product literature it is seen that the machine was for packaging the biscuits and as discussed by the Collector of Customs (Appeals) was correctly classifiable under sub-heading 8422.40. We also find that both the Form, Fill and Seal Machine and the Machine for the High Speed Automatic Wrappers were covered by the benefit of the Notification. In appeal, the Revenue had contended that there was no evidence that the machine was having the arrangement for vacuumising or flushing of the inert gas. We find that this condition is not applicable to the goods covered by Serial No. 29 of the said table. After going through the product literature, we do not find any material on record to warrant any interference in the view taken by the Collector of Customs (Appeals). As regards the classification and applicability of the exemption Notification, the learned Departmental Representative had referred to the ground No. 2 in their appeal which refers to the fact that the machine was not a complete machine and that the catalogue produced could not be correlated to the goods actually imported. We find that while in the invoice goods had been referred to as the Horizontal Form, Fill and Seal Machine, the machine had been described in the catalogue as a wrapping machine. The learned Advocate had referred to the Order-in-Appeal where it had been referred that the machine imported was an AP 400 machine and that the description given in the catalogue covered the description in the Bill of Entry as High Speed Automatic Wrapping Machine, although initially the goods had been referred to as Horizontal Form, Fill and Seal Machine. We find that the sub-heading No. 8422.40 had been shown in the invoice and the Revenue had not raised any objection with regard to the classification. We have already referred to above that sub-heading No. 8422.40 covered other packaging or wrapping machine. When for the purposes of classification the goods have been taken as wrapping machine, we consider that the benefit available to the goods under Serial No. 29 of the Table annexed to the Notification No. 125/86-Cus. could not be denied.

5. The Assistant Collector of Customs who had adjudicated the matter had categorically stated that as per examination report, all the items indicated in the packing list made one complete machine. He had, however, held that the control

panel of the machine had not been supplied. The respondents explained that the control panel was to be purchased locally as the control panel of the Italian suppliers was not found suitable for Indian condition. We consider that when the complete machine in knocked down condition had been imported, for classification for customs duty purposes it could not be considered as parts. We feel that at no stage any attempt has been made to classify the goods under sub-heading 8422.19 which covered the parts. As for classification purposes, the goods have been taken as complete machinery, we consider that for the purposes of the notification also they could not be considered anything other than the machinery.

6. Taking all the relevant facts and evidence into consideration, we do not find any material to interfere with the view taken by the Collector of Customs (Appeals). As a result, the appeal filed by the Revenue is rejected.