

Shah Engineering Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-30-1998

Reported in : (1998)(62)ECC225

Appellant : Shah Engineering

Respondent : Collector of Central Excise

Judgement :

1. The issues for determination in the above appeal which arises out of the order passed by the Collector of Central Excise (Appeals), Bombay are as under :- (i) Classification of the product described as "Kwik Chipper and Slicer" -according to the assesseees the product falls for classification under CET subheading 8212.11 and the benefit of Notification No. 107/88 read with Notification No. 67/90 is available to this product, while according to the impugned, order, the item is classifiable under CET sub-heading 8210.00 and benefit of Notification is not available.

(ii) Classification of "Tape Dispenser" - according to the assesseees, this is classifiable under sub-heading 3923.90 of the Schedule to the CET A, 1985 and the benefit of Notification No. 53/88 (at Sl. No. 39) is available, while the impugned order holds that the product falls for classification under CET sub-heading 3926 and the applicability of the Notification has not been discussed in the impugned order.

2. We have heard Shri P.B. Ranadive, learned Consultant and Shri H.K.Jain, learned SDR. "Kivik - Chipper and Spicer" - This has been explained to be the slicer for potatoes as well as other vegetables and the appellants' claim that it is covered by the description occurring in sub-heading 8215 which covers :-82.15 8215.00 Spoons, forks, ladles, skimmers cake-servers, fish- 15% knives, butter-knives, sugar tongs and similar kitchen or tableware." 4. The appellants' claim is that the item is a type of kitchenware and is, therefore, covered by sub-heading 82.15. However, we find that the Collector (Appeals) has correctly classified the item under sub-heading 8210. Since indisputably it is hand-operated mechanical appliance, and since it is used for preparing potatoes and vegetables (by slicing or cutting them) it is covered by the more specific description occurring in CET sub-heading 8210 which covers "Hand-operated mechanical appliances, weighing 10 Kg or less, used in the preparation, conditioning or serving of food or drink". The HSN Explanatory Notes to Heading 82.10 also supports our view - the notes explains that mechanical feature involving classification in this heading will apply to the appliances having mechanical function and design for fixing on wall or other surface etc. We have seen the product in dispute and find that there are two holes at the base of the Kwick Chipper and Slicer.

The learned Consultant explains that the purpose for providing holes is to fit rubber stopper. We find that this can only be for the purpose of fixing the chipper /slicer to a surface to prevent slipping. HSN notes that clearly set out that vegetable or fruit slicers including potato chippers are covered by Heading 82.10. Since Heading 82.10 provides a more specific description of this type of mechanical appliances used in preparation of food, we uphold the Collector (Appeals) finding on classification. Since the appellants' Consultant fairly states that the benefit of Notification No. 107/88 would not be available, if the classification of the product is upheld under CET sub-heading 82.10, we hold that the Notification is not applicable to this product.

5. Tape Dispenser : The claim of the appellants for classification under CET sub-heading 3923.90 cannot be accepted because this heading covers "articles for conveyance or packing of goods of plastics, stoppers, lids, caps and other closures of plastics" while the product in question is only used for dispensing the

tape and is not a packing material. The tape is contained in a plastic body and is periodically dispensed as and when required, by a mechanism when the tape dispenser is operated. In no way can this be considered as an article for conveying or packing of goods, hence classification under heading claimed by the appellants is ruled out. The only classification applicable would be sub-heading 39.26 which covers "other articles of plastic". Hence, we see no reason to interfere with the finding of the lower appellate authority on the classification of the tape dispenser.

However, since Sl. No. 39 of the Notification No. 53/88 covers goods falling either under CET sub-headings 39.23, 39.24 or 39.26, we hold that the benefit of this Notification will be available, provided the appellants are able to satisfy the Assistant Commissioner that the conditions set out against this Sl. No. of the table annexed to Notification No. 53/88 have been fulfilled by them. For this purpose, the matter of eligibility of the tape dispenser to the benefit of Notification No. 53/88 is remanded to the jurisdictional Assistant Commissioner who shall pass fresh orders after extending reasonable opportunity to the appellants of being heard in person and adducing such evidence as they consider necessary for the purpose of satisfying the Assistant Commissioner that the conditions of the Notification have been fulfilled by them.

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