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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-07-1998

Reported in : (1998)LC277Tri(Delhi)

Appellant : Jay Construction Co.

Respondent : Collector of Customs

Judgement :

1. Question involved herein is classification of a machine described as a "paver finisher". The appellants claim the classification under Tariff heading 8429.20 or 8429.19 as a grader and a leveller read with Notification No. 59/87. On the other hand the lower authorities have classified the machine under Tariff Heading 8479.10 which has the following description "Machine and Mechanical Appliances having individual function, not specified or included elsewhere in this Chapter - machinery for public works building or the like".

2. The lower appellate authority's findings for holding the classification under Tariff Heading 84.79 is as follows :- "5. As seen in the literature produced that the subject machine is a self propelled paver finisher (model BB 640) equipped with hopper of 10 tonne capacity and screed to assure a constant flatness of work on uneven grounds. Material from hopper is conveyed to both the sides and is spread by two angles. Laying off width can be controlled by electrohydraulic controls. Automatic levelling devices lengthwise and transversal can be had on request, means they are optional with the machine.

6. The machine is imported for International Airports Authority of India and vide their letter dated 29-1-1992, they have required that the paver finisher should be fitted with hydrostatic drive/control, hydraulically extendable screed with tamping and vibrating arrangement fitted with an electronic sensing device for automatic levelling and profile control. IAAI have required the Paver Finisher for laying of asphaltic concrete over the runway.

8. The design, the method of functioning and use of the subject machine is entirely different from the graders and levellers of Heading 8429.20 and it cannot be said that this heading is specifically covering the subject machine.

9. The principal function of the machine is road surfacing.

Surfacing material is spread from the hopper. The screed is provided to assure constant flatness of work on uneven grounds.

13. As discussed earlier principal function of the subject machine is laying of surface material and such type of machines are not covered in any heading of this Chapter or any other Chapter of nomenclature, hence they would automatically fall under residuary Heading 84.79. Even otherwise, also, if we go through H.S.N. Explanatory notes (p-1316) it would be seen that CTH 8479.10 covers machines whether or not self propelled, for spraying gravels on road or similar surfaces and self propelled machines for spreading and tamping bituminous road surfacing materials." 3. As against the aforesaid findings learned Advocate Shri Pradeep Jain has pointed out that lower authority has gone wrong in holding the principal function of the machine as merely laying and spreading of the surface material. He submits that the authority has adverted its attention only to the functions of "Hopper and feeding system" in the catalogue produced before the Customs authorities. It has completely ignored the levelling function of the machine which is described under the heading "screed". In order to appreciate the contention of the learned Advocate we reproduce below the function of 'screed' which is a very important function of the machine :- "SCREED : the screed is pivoted at the center point of the machine to assure a constant flatness of work on uneven grounds. It consists of two central fixed plates (125 cm length each) and two lateral mobile plates, hydraulically operated, sliding on a telescopic cylindrical guide chromium

plated for wear resistance. Bushes are over dimensioned to resist shocks and vibrations. The sold plates are made of wear resisting indeformable steel and heated by four gas propane burners, one for each element.

A vibrating sole plate is fitted for all the screed length. Variable laying off width is obtained by means of electro-hydraulic controls.

The easy modification of the plate axis allows modifications of shapes (V W M) with different angles (+4.5%-2.5%) according to the job requirements.

He submits that the function of screed is to assure a constant flatness of work on an uneven ground. Therefore the function of the machine is of levelling. It cannot be under estimated and in fact it is a principal function. It is only when the ground is levelled that a road can be laid and paved. Again, the levelling function takes over by way of levelling device for levelling in spreading the surface material.

Learned Advocate therefore submits that the function of the main machine is levelling and therefore its classification as a levelling machine under Tariff heading 8429.20 is the most appropriate. It is true, he submits that an additional function of delivering the surface material and spreading the same is also performed by the machine but an additional function cannot take away a principal function and therefore he prays for the classifying the machine under Tariff Heading 8429.20 and consequently granting the benefit of relevant notification.

4. Opposing the contention learned JDR Shri R.S. Sangia, highlighting the facts which we have already recited in the above paras, draws attention to the fact that Tariff sub-heading 8479.10 relates to "machinery for public works" like that of a run away and road building which is in the realm of public works. Learned JDR therefore submits that this heading is more appropriate and therefore the classification has been correctly made by the lower authorities.

5. We have carefully considered the pleas advanced from both sides. We have to remember that tariff Heading 84.79 is in the nature of residuary heading which states that where any function or any machine which is specifically not spelt out elsewhere in Chapter 84, is classified under that heading. Therefore, on the

general principles of construction, we have to find out whether the machine in question cannot be identified with any other appropriate heading or not. As rightly pointed out by the learned Advocate graders and levellers are specifically mentioned in tariff sub-heading 8429.20. This sub-heading being more specific to the machine in question it will not be appropriate for the authorities to resort to a residuary heading. The question of principal function will not apply to a residuary item which is an item of last resort to a classification. We, therefore, agree with the learned Advocate that machine clearly fall within tariff sub-heading 8429.20 having regard to both the functions of the machine i.e. levelling of the ground as also delivery of surface material and spreading the same. Consequently we allow the appeal with resultant relief to the appellants, after we set aside the impugned order.

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