

Cc Vs. Fabrico and ors.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-11-1998

Reported in : (1999)(80)LC602Tri(Mum.)bai

Judge : J T P.C., S Kang

Appellant : Cc

Respondent : Fabrico and ors.

Judgement :

1. Briefly stated the facts of the case are as follows. The respondents in this appeal imported Industrial Sewing Machine with stand, table and motor, all described in the invoice as Industrial Sewing Machine with one single value. The authorities below classified and assessed the machine separately and stand, table and motor separately on merits. The respondents filed the refund claim. Their refund claims were rejected holding that assessments were made correctly.

1.1 In appeal before the lower appellate authorities, the respondents succeeded. The said appellate authority has held as follows:-- The goods are electrical industrial sewing machines. The clutch motor is a part and parcel of the machine without which the machine cannot function. Further, the table and stand are needed to mount the machine on it. The construction of the machine is such that without stand, it will not work. Table enhances the effectiveness and efficiency of the machine. Hence all the three items are essential and integral parts of the machines without them machine will not perform or perform upto the desired level

for which these are indented. Also, all these contribute together to a clearly defined function. In view of this, as per Section Note 4 to Section XVI of the 1st Schedule to the Customs Tariff Act, 1975, the whole is required to be classified together in the heading meant for the sewing machine.

2. Against the aforesaid findings, the Revenue has come in appeals stating that motors, tables and stands are not compulsorily supplied along with the machine equipment i.e. industrial sewing machine.

Therefore they are not essential and standard constituents of machine equipment and consequently these have been rightly classified in their respective headings and assessed to duty on merits. The grounds of appeal also refer to some decision in the Conference of Collectors held in October, 1990.

4. Opposing the contention, Id. advocate Shri G.L. Rawal, points out that Revenue has not rebutted the findings of the lower appellate authority to the effect that the motor, stand or table are the integral part of the industrial sewing machine. In fact it is one whole thing and only one value is charged for the machine. Separate values were not charged. This finding, he submits has gone unrebutted. In view of this state of affairs the appeals are not tenable at all. Apart from that he also relies on Tribunal's judgement in the case of Vishal Exports v.CC, Bombay decided by final Order No. C/2947-2948/97-B2 dated 9.12.1997 wherein it has been held in para 8 and 9 of that order that industrial sewing machine as well as stand are to be classified under sub-heading 8452.40. However for the purpose of notification only, the benefit had not been given because notification in consideration in that case was relating to a particular sub- heading unlike the notification in the present case which is applicable to the entire heading 84.52. He also relies on the Tribunal's judgement in the case reported in 1998 (24) RLT 540 wherein it has been held that goods forming integral part of a particular machine are to be assessed along with the machine, He therefore, submits that the impugned order is correct in fact and in law and hence the appeals be dismissed.

5. We have carefully considered the pleas advanced by both the sides.

In view of the Tribunal's judgement in the case of Vishal Exports referred to supra, we hold that the industrial sewing machines imported as such is classifiable under sub heading 85.42 as held in the case of Vishal Exports. These machines are also liable to be extended the benefit of concerned notification because the benefit extends to the tariff heading 85.42. In view of the foregoing finding and discussion, we dismiss the appeals of the Revenue.

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