

K. Mohan and Co. Vs. Collector of Customs

K. Mohan and Co. Vs. Collector of Customs

SooperKanoon Citation : sooperkanoon.com/1459

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-30-1983

Reported in : (1984)(15)ELT430TriDel

Appellant : K. Mohan and Co.

Respondent : Collector of Customs

Judgement :

1. Aggrieved by the orders of the Appellate Collector of Customs, Madras, (Order No. C. 3/3001/ 80 dated 28-3-81) confirming the order of the Assistant Collector of Customs, Madras, the appellants are before us. The appellants have imported a consignment of 25 Nos. Eastman Model 629 Blue Streak II Straight Knife Cloth Cutting Machines. They claimed the classification under Tariff Heading 84.40(1) of Customs Tariff Act 1975 (hereinafter called the 'Act) with benefit of Notification No.41-Cus-178, dated 1-3-1978. The Assistant Collector of Customs in his order dated 9-7-1980 held that the goods imported were not automatic cloth cutting machines in the sense that various movements were coordinated by manual control. He also observed that the machine could come more appropriately under Tariff Heading 85.05 of the Act because the machine was a tool for working in the hand. Even assuming that the machine would come under the purview of heading 84.40, he held that the classification under 85.05 occurring later in the Tariff Schedule, that would apply for tariff classification. The Appellate Collector of Customs confirmed the views of the Assistant Collector.

2. Both the parties relied on C.C.C.N. (B.T.N.) and its explanatory notes in their arguments. Shri M.G. Abrol, Consultant, appearing for the appellants, contended that the classification 84.40(1) with the benefit of the notification attracting 25% of the levy alone would be justified. He argued that the machines as such have been imported by the garment industry of India as automatic cloth cutting machines. He further urged that the machine had inbuilt mechanism for automatically sharpening the blades and for lubricating the parts. According to him, the cardinal principles of interpretation call for a broad scrutiny of the notifications without rendering it a nullity or defeating the intentions of the rule-making authorities.

3. The learned SDR urged that the machine required manual operation in the course of the cutting of the garments and that Heading 85.05 would be applicable. According to him, Heading 84.40 "fabric cutting" means machines designed for industrial use during the course of the manufacture of textiles. He also urged that in the Collectors' conference held in March, 81, the machinery in question was examined and they have classified it under Tariff Entry 85.05. He emphasised that even though the blades are operated by a motor, the machine has to be guided by hand along the line of cutting and would therefore be a tool for working in the hand within the meaning of Heading 85.05. Even if it was held that Heading 84.40 and the Heading 85.05 can both apply, under Rule 3(c) of the Statutory Interpretative Rules, the later of the two items should be preferred.

(i) whether the machines in question would come within the Tariff entry 85.05 or 84.40; (ii) whether the appellants are entitled to the benefits of the Notification No. 41-Cus/78, dated 1-3-1978.

5. For the purpose of understanding the relevant contentions, it must be said that 85.05 refers to "Tools for working in the hand, with self-contained electric motor". This heading is specifically restricted to tools with built-in electric motors or vibrators but are designed" for "working in the hand" as defined in the Explanatory Note to Heading 84.49. Adverting to the Explanation in 84.49, it must be mentioned that the expression "Tools for working in the hand" means tools designed to be held in the hand during the use and also heavier tools (such as earth rammers) which are portable and which can be lifted by hand by the user in

particular, while the work is in progress. Reading the entry 85.05 with the Explanation above stated, the two essential requirements are the holding of the tool by the hand during the use, and its portability while the work is in progress, A diagram of the machine in question was filed before us and it is seen that it is not designed to be held in the hand during use. The machine is versatile, flexible, adaptable and intended for cutting any cloth from the sheerest chiffon to the toughest denim. The machine is fitted with blades in eight lengths and by propulsion of a motor it is intended to suit any cutting assignments. It is also rightly urged that the weight of the machine is 15.42 Kg., .65 h.p. single phase, .93 three-phase, and cannot be removed or lifted while the work is in progress. Of course a certain amount of manual control is essential to draw the cutting edges of the blade, to operate along the desired design. On that account, it cannot be said that it is a tool for working in the hand coming under 85.05. An argument was advanced that Serial No. 14 of 85.05 referred to cutters for cutting textiles in ready made clothing industry. But the term "cutters" would infer that the cutting medium held in hand removes the material from the work piece. In the instant case, both the Appellate Collector and also the Assistant Collector have mainly decided the issue on the basis that the machine required certain amount of operation by the hand and the entry 85.05 would be more appropriate. As pointed out above, a mere manual control of the movements of the machine for securing particular designs will not reduce the same as a tool for working in hand.

6. Let us now consider whether 84.40 would be applicable. Entry 84.40 refers, among others, to Fabric Folding, Reeling or Cutting Machines.

The explanatory note indicates that to fall within the heading, the apparatus must have mechanical features and must be clearly intended for treating textiles. An argument was advanced by the learned SDR that entry 84.40 would refer to the process of cutting at the production stage. Shri Abrol, relying on the Brussels Tariff Nomenclature, urged that such an interpretation was not justified because item 20 of 84.40 therein referred to cloth cutting and pinking machines, including machines for cutting out patterns or parts of garments, etc. This argument is well founded and it is manifest that the term "fabric cutting machine" would include cloth cutting process at every stage and not only at the stage of initial production. We also note

that under Notification 41/F1 No. Bud. (Cus.)/78 of 1-3-78, the Government exempted machines specified in the notification falling within chapter 84 which, among others, include automatic button hole industrial sewing machine, automatic cloth cutting machine, etc. It follows that automatic cloth cutting machine has also been treated as a 'machinery' and not 'tool'.

7. The learned representative of the appellants rightly pointed out that the firm has imported such machines on former occasions and that the acceptance of a particular word-by trade-and its popular meaning should be taken into consideration. He relied on a judgment reported in the A.I.R. 1977 Supreme Court 397. *Dunlop India Ltd. v. Union of India and Ors.* It must be mentioned that in respect of the machinery under scrutiny, the Clothing Manufacturers Association of India have stated that this machine was known as "Automatic Cloth Cutting Machine" in the industry. The Government of India, Ministry of Industry, Department of Industrial Development (Office of the Textile Commissioner), in their letter dated 2-4-1980, have stated that the Blue Streak II Straight Knife Cloth Cutting Machines are allowed to be imported under Sl. No.5(29) of Appendix 2 of the Import Policy. The Eastman Export Corporation have also certified that the knives are automatically sharpened. It is argued that these documents should not be relied on as they were issued subsequent to the importation. But these exhibits refer to the type of the machinery. Their probative value is substantial as such machines have been imported previously also.

Further, it is rightly pointed out by the appellants even the Collectors have entertained a doubt and held a conference only in March, 1981 (subsequent to the date of importation of these machines) to decide about the correct entry. So, it is not open to the department to contend that no credence can be attached to the documents.

8. We have yet to find out whether the appellants are entitled to the benefit of the Notification No. 41-Cus/78 dated 1-3-78. That Notification refers to 'automatic cloth cutting machines'. The lower authorities have entertained a doubt that the machines in question were not automatic cloth cutting machines because a certain amount of manual effort was required in cutting the garments to appropriate

patterns.

There is a fallacy in this view, as the notification contemplates 'automatic' in respect of the process of cutting of the cloth. In other words, even if the material has to be projected manually on the machine take to secure the needed pattern, if the cutting is carried on by the machine automatically, it would qualify for the exemption. It is not disputed that the blades of this machine cut the cloth at a high speed being electrically operated. Further, it is necessary that in respect of fiscal statutes, the Notification cannot be defined in a manner so as to destroy the very effect of the Notification or render the Notification to a nullity. It is rightly explained that identical goods were released by Bombay, Calcutta and Madras Custom Houses giving the benefit of the Notification. While there is no *res judicata* or *estoppel* in taxation matters, we are of the view that Customs authorities should not, in the absence of fresh facts brought to their notice, contrary to judicial decision or change in law, arbitrarily change a Customs Classification in respect of an article or goods. The term "automatic" has been defined in McGraw-Hill Dictionary of Scientific and Technical Terms as follows :- "Automatic : (ENG) Having a self-acting mechanism that performs a required act at a predetermined time or in response to certain conditions".

Applying the definition aforesaid, it is manifest that the imported machine has inbuilt self-acting mechanism for being used for cutting without any manual effort.

9. To sum up, the Textile Commissioner, who is industrially concerned and is the competent authority with regard to the imported machine certifies that it is an automatic cloth cutting machine. The Clothing Manufacturers' Association of India, who represent the Trade, in respect of the machine, also say the same thing. The Manufacturers' Eastman Export Corporation also certifies about the automatic nature of the machine. There is no evidence in rebuttal. On the other hand, the Customs Houses themselves have been classifying the machine as an automatic cloth cutting machine and the matter was referred to the Collectors' Conference because of doubt and difference in classification. We have already said that cloth cutting part of the machine is automatic and does not require any manual help and that the article is not a tool. The irresistible conclusion is that the machine in

question is an automatic cloth cutting machine, coming under Tariff entry 84.40(1) with the benefit: of the Notification No. 41-Cus/78 dated 1-3-78. The appeal is allowed with consequential relief.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com