

Collector of Customs Vs. Simac Group (India) Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-03-1984

Reported in : (1985)(22)ELT115TriDel

Appellant : Collector of Customs

Respondent : Simac Group (India) Pvt. Ltd.

Judgement :

1. The question for decision in these appeals, originally a show cause notice issued by the Government of India against Order-in-Appeal No.220/81-B.C, dated 16-4-81 passed by the Collector of Customs (Appeals), Bombay is whether flat knitting machine Model DX 2000 manufactured by the respondents is classifiable under heading 84.37 (1) of the Customs Tariff Act, 1975 and parts of the same imported under heading 84.38(1) as claimed by the respondents or under heading 84.37(2) and the parts under 84.38(2) as claimed by the appellant (Department).

2. Respondents are manufacturer of knitting machines. One of the Models is Model DX 2000. They, by two Bills of Entry imported certain parts for these machines. At the time of import the parts were assessed under heading 84.38(2). They applied for refund claiming re-classification under heading 84.38(1). The Asstt. Collector of Customs, Bombay by orders dated 16-10-80 and 21-10-80 held that the knitting machines were domestic machines and he rejected the claim for refund. In appeal, the Collector of Customs (Appeals), Bombay by order dated 16-4-81, held that the knitting machine was industrial machine falling under heading 84.37(1) and the correct classification of its parts would be heading 84.38(1). With

these findings he allowed the appeal.

3. The Government of India, then issued Show Cause Notice dated 21-10-81, proposing to review the Order-in-Appeal passed by the Collector of Customs (Appeals), Bombay in exercise of powers vested in Government of India under Section 131(3) of the Customs Act, 1962. For the purpose it relied on the manufacturers' leaflet in which machine was shown as being for household use. It was also stated that machine which is essentially domestic, remains domestic even if it found application in cottage industry. Another ground was that machines used in industry are all power operated and require over 1½ horse power, which was not satisfied in the case of the machine. In foreign countries knitting machines of similar kind were considered domestic.

The notice also relied on C.C.C.N. for stating that heading 84.37 included all domestic hand knitting machines. Further ground was that heading 84.37(2) was specific for domestic knitting machines and in case of dispute between sub-heading (1) and (2), the latter sub-heading would appear to prevail in terms of Rule 3 of Interpretative Rules.

4. The respondents filed a detailed reply, challenging the notice on various grounds as set out in the reply. It was submitted that on the material provided in the Review Notice a conclusion cannot be drawn contrary to the findings made by the Collector of Customs (Appeals).

They requested for withdrawal of the review notice. By this time this Tribunal had been set up and the show cause notice issued by the Govt.

of India stood transferred to the Tribunal to be disposed of an appeal presented before it. After the transfer the appellant in order to comply with the procedural formalities filed another appeal.

5. Before the Tribunal, the appellant (Department) has filed a copy of Item 72(I) of the ICT, statement of objects and reasons of Customs Tariff Bill, 1974, extract from Notices and clauses as contained in Bill, photo-copy of advertisement by Raj Mechanical Industries manufacturer of Raj Knitting Machine (Industrial) Ludhiana,

photo-copy of advertisement of Domestic hand knitting machine manufactured by M/s.

Groz Backert Saboo Ltd., Chandigarh.

6. The respondents, when the matter was pending with the Govt, of India had forwarded catalogue of Knit Fab., Sona Knit of M/s. Sun Shine Stores, New Delhi, Knit Master Models KM 101 and KM 200, Purchase Order No. B. 5518 dated 31-9-1981 of Canteen Stores Department and Purchase Order dated 24-3-81 of Unicef, New Delhi on the respondents and five Certificates dated 7-8-82 from Anand Women Rehabilitation Society, New Delhi, Samuday Bhavan, Trikon Park, Sawhney Wool's New Delhi, M/s.

Manchari Hosiery, New Delhi and Mahila Silpakala Vidyalayas. While forwarding these catalogues and certificates, the respondent by their communication dated 13-8-82, (Annexure-IV of their reply), in para 3 stated that small domestic knitting machines referred to at (1) above are sold between Rs. 700/-to Rs. 900/- per piece; whereas Simac Knitting Machine Model DX 2000 costs around Rs. 3,500/- per piece to customer.

7. When the matter was heard, the respondents also filed an affidavit by one Shri Luxman Subramaniam, Manager of the Respondents affirming that the parts imported were not interchangeable for use in the manufacture of any other models of knitting machines made and marketed by the respondent. Another affidavit of Rajindra Kumar, Mg. Director regarding use of parts in DX 2000 and correspondence between Asstt.

Collector and the respondent was also filed. They also filed the communication between the Asstt. Collector of Customs and respondents and certificate of the Textile Commissioner, Bombay. All these documents where necessary would be specifically referred to later.

8. It may be mentioned that the. Show Cause Notice issued by the Govt.

of India incidentally referred to other models of the respondents like DX 4000 and Bulky Eight 5001. The material on record, however, shows that the machine

considered by the Asstt. Collector of Customs and the Collector of Customs (Appeals), related only to Model DX 2000. Our findings in these appeals are limited only to Model DX 2000. On this point, there was no dispute even by the appellants (Department).

9. At the hearing of the appeal, Shri V. Lakshmi Kumaran, learned SDR in support of his contention that Model DX 2000 flat knitting machine is domestic advanced the following arguments. He relied on 3 decisions : (i) J. Vamana Prabhu v. State of Mysore-(1967) 20 STC page 38 to 40 and 42 (Mysore High Court); Kanwl Sewing Machine Co. v. Collector of Customs, Bombay- 1983 E.L.T. page 804 (CEGAT).

Shri Lakshmi Kumaran submitted that for determining whether an appliance or machine is for domestic use or some of the following criteria would have to be considered : He briefly explained the construction of the model and its operation.

He relied on the respondents catalogue for his contention that a house wife without any training can efficiently knit with the machine with the help of instructions given in the booklet supplied by the dealer.

He also relied on the fact that the model is manually operated but admitted that this by itself may not be decisive for determining whether the model was domestic or industrial. He compared the performance of the model with sewing machine and submitted that the respondents' contention that the model was for industrial use was ridiculous. Regarding price, he submitted that the price of the model was not so exorbitant that a middle class Indian family cannot afford the same. About its performance and output he submitted that a domestic knitting machine need not necessarily meet the demand of the members of the family only but can also do the same for relatives, friends and neighbours. He submitted that for the purpose the matter to be considered should be satisfaction and happiness of a house wife in knitting sweater compared with the same being bought from the market.

The test in such case should not be, only in terms of money. He also argued that almost every house in Arunachal, Meghalaya, Assam and some States of India had hand operated knitting machine either like the model like in question or other

similar models. He challenged the findings of the Collector of Customs (Appeal) on the basis of cost, performance and output of the machine. He compared the specification and performance of the model with respondents model DX 4000 and Bulky Eight 5001 and submitted that when the respondents admitted that model DX 4000 and Bulky Eight 5001 were admittedly domestic it was ridiculous to say that on the comparison of specification and performance model DX 2000 would not be domestic. He relied on catalogue and the description given therein. The catalogue shows that DX 2000 is an income earner of the family, an interesting and paying hobby. He compared the cost of the model with other models. He challenged the certificate given by the Textile Commissioner and submitted that even on the respondents admission about Model DX 4000 and Bulky Eight 5001, the certificate was shown to be defective and was therefore inadmissible in evidence. He in particular by giving example of Charkha and Amber Charkha argued that merely because these were used in cottage industries they would not become industrial machines or appliances. He compared the model with circular knitting machines industrial type and submitted that the model is not industrial machine. He further submitted that even if a knitting machine is used for domestic as also for industrial purposes, it would still be classifiable under heading 84.37(2), the heading being specific. He also relied on the Supreme Court decision in Dunlop India Limited and Anr. v. Union of India and Ors., 10. On behalf of the respondents, Shri K Narasimhan, learned Advocate for the respondent strenuously controverted the submissions of the learned Sr. Departmental Representative. Shri Narasimhan argued that the scope of the revision is restricted and confined to the grounds set out in the show cause notice dated 21-10-1981. The dispute related only to Model DX 2000. He referred to the meaning of word Domestic in Shorter Oxford Dictionary and New Webster's dictionary. He submitted that the concept of 1/4 horse power does not exist in the CTA 1975. It existed only in the ICT (this was also agreed to by the appellant). He submitted that the order of Collector of Customs (Appeal) based on annual production, selling price, price of the model, sale of the model being entirely to cottage Industry of Ludhiana was proper and did not call for any inference. He distinguished the three rulings cited by the learned S.D.R. He also criticised the criteria for judging whether the model is domestic proposed by S.D.R. on various grounds. He challenged the S.D.R.'s

contention about the interchangeability of parts relying on Subramaniam's affidavit to which we have already referred to above.

He detailed the performance of Model DX 2000 in support of his contention that Model is not a domestic knitting machine. During arguments he vehemently denied that he had conceded that Model DX 4000 or Bulky Eight 5001 were domestic models. He strongly relied on the Textile Commissioners certificate. To urge that the model was not a domestic model but their use is in the industry, he also relied on the certificate filed from purchasers and institutions dated 7-8-82. He challenged inferences proposed to be drawn by the S.D.R.'s reliance on Explanatory Notes in C.C.C.N. to Chapter 84.37 (page 1298 Section XVI in Volume III) as for the S.D.R.'s reliance on Interpretative Rules, Shri Narasimhan submitted that reliance should be placed on Note 5 to Chapter 84 and submitted that it should be held that a machine which is used for more than one purpose is for the purposes of classification to be treated as if its principal purpose were its sole purpose. The appellant had not discharged the burden so as to come to a contrary finding to what the Collector of Customs (A) has set out in his order.

For the purpose he relied on a CEGAT decision in Mysore Industrial Plastic Corporation v. Collector of Customs, 1983 E.L.T. 845 and the Bombay High Court decision in the case of M/s. Garware Nylons, 1980 E.L.T. 249 (Bombay). He further submitted that the Supreme Court decision in Dunlop case has no relevance as both the sub-headings are equally specific as one covers what is excluded by the other.

11. The show cause notice alleged that horse power of the machine is 1/4 horse power which is applicable to domestic machine. During course of arguments, Shri V.M.K. Nair, who was earlier arguing the appeal conceded that in C.T.A. 1975, horse power as a criterion for the purpose has been given up. We do not therefore deal with this aspect.

12. The Collector (Appeal) held that the machine was not domestic but industrial on the basis of its being used in Cottage Industry in Ludhiana, meaning of domestic and cost, performance and production of the machine. He held that in absence of definition of the word domestic its meaning should be limited to family

use. He then held that investment on the machine (which at the material time was Rs. 1,000) and production were such it could not be called domestic. It would be useful if the material part of his discussion is extracted below : "These machines of appellants are being used in Ludhiana on a very large scale, in the cottage industry. On an eight hour shift basis these machines are capable of producing minimum 2 full sleeve all wool sweaters of intricate designs and three sweaters of relatively simple design. It can produce during the same working hours about 5 sweaters sleeveless variety. The production jumps up about three fold to five fold when the same machine is operated by an electric motor. I have seen the machine in actual operation. The same machine is capable of being worked by manual labour and also by electric motor, just like a domestic sewing machine which can also work by either source of power. The appellants' selling price of these machines is about Rs. 1000 each. It means that by way of interest depreciation and repairs even to keep an idle machine or relatively little worked machine it cost about Rs. 360 per annum. A full sleeve all wool sweater of medium quality these days costs about Rs. 200, and requires about 16 ozs. of wool. The ratio of raw material costs of wool to price of a full finished sweater working out to about 50%. 16 Ozs. of wool would cost about Rs. 100. To think household for its individual needs will purchase these machines is neither pragmatic nor supported by facts. Almost entire sales of the Appellants are for the Cottage Industry of Ludhiana. Nobody would invest Rs. 1000 if the machine would produce the household needs for an average family of 4 members in less than a week's time. It would be an uneconomic investment vis-a-vis purchasing ready-made sweater for the entire family. In my opinion, these machines whether worked on power or on manual labour do not deserve to be called domestic knitting machines. They are therefore industrial machines." 13. We will deal with cottage industry aspect of the matter later. In our opinion, the learned Collector was wrong in concluding on the basis of cost of the machine and its production that it was industrial. Cost and production of the machine would not be an infallible test for concluding whether it is industrial or domestic. On this test many things which are admittedly domestic may not qualify for being so-called. A good camera costing nearly Rs. 2,500, a V.C.R. costing nearly Rs. 15,000, a cow costing nearly Rs. 3,000, a she buffalow costing nearly Rs. 5,000 (whose milk yield is more than the requirement of the family) would

cease to be domestic. Purchaser of anything domestic does not calculate like a trader its cost, depreciation and production. A domestic machine may be purchased even for its occasional use and utility, its cost and overall production notwithstanding. Its domestic nature should be judged on the class and status of the purchaser.

14. Before we deal with other evidence in the case. We may first deal with a certificate dated 4-4-79, issued to the appellants by Assistant Director in the office of Textile Commissioner, Bombay. This certificate says that appellants Model DX 2000, DX 3000, DX 4000 are used in medium, small scale industries/cottage industries and are of industrial type. This certificate is not relied on by the Collector in his order. Assistant Collector did not accept this certificate. The Certificate is vague inasmuch as it is not clear about DX 2000. If the three qualification of use in medium, small scale and cottage industries be held applicable to DX 2000-that is not even the respondents case. The certificate at best is an opinion and basis of the opinion is not stated in the certificate. We do not attach any importance to the certificate. In *Dunlop India Ltd. and Anr. v. Union of India*, (AIR 1977 S.C.597), the Supreme Court held that it is well established that in interpreting the meaning of words in taxing statute acceptance of a particular word by the Trade and its popular meaning should command itself to the authority. Now in this case, the Revenue-the appellant did not make any attempt to find out whether the machine in question is understood in the trade-, as domestic or industrial. The respondent however has let in considerable evidence in support of its argument that it is used in cottage industry. It is true that in tax matters burden is on revenue but when the other party has itself led evidence, the question of onus becomes academic. It has to be seen whether on the evidence on record the machine merits to be called domestic or otherwise.

16. We have on record catalogue of machines manufactured by the respondent. In one catalogue another machine is described as 'Automatic Flat Knitting Machine power operated Industrial type'. The other leaflet describes three Models DX 2000, DX 4000 and Bulky Eight 5001.

It is significant that in this leaflet Model DX 4000 is described as "the perfect machine for semi-professionals and cottage industries".

Now if the respondents' contention that Model DX 2000 is an Industrial machine or for cottage industry were correct, one would expect a similar description. Its absence taken alongwith the fact in the description of DX 2000-it is said "the automatic hand knitter the household wife is seeking'knit today-wear tomorrow' acquires special importance. We realise that classification of goods should not be on the basis of catchy slogans but we are only comparing the description of the machines in the leaflets. It is not a case of catchy slogans. It is a case of ordinary human conduct. If the machines were really industrial, the respondents would not have failed to describe it as such when it did so in case of other machines.

17. From reading the respondents reply to the show cause notice (para 14) it would appear that the machine or a similar machine would be domestic in Europe because average needs of the family there are much higher, society is affluent and cold season lasts for longer period in the year. They have urged that in the context of Indian conditions it could not be called domestic. This argument is not acceptable. At best due to difference in economic conditions fewer people may possess the machine, but the machine would still remain domestic. Now in the face of this admission that in the continental context it would be domestic machine, very strong and clear evidence would be necessary to hold that what is a domestic machine in the continent is in the Indian conditions not so. In the following paras we would show such evidence is lacking in the case.

18. During course of arguments Shri Narasimhan learned Advocate for the respondent argued that the present inquiry cannot travel outside the grounds set out in the show cause notice. We have not been able to appreciate this contention. The show cause notice already said that the machine was domestic. The discussion, arguments, evidence and reasons are only to determine whether it is domestic or not. Doing so cannot be said to be going outside the show cause notice.

19. The respondents themselves filed catalogues of Knit Fab., Sona Knit, Knit Master and Raxew hand knitting machines, alongwith their Advocates (Shri S.D.

Nankani's) letter dated Aug. 13, 1980. In para 3 of the letter they stated small domestic knitting machines referred to a (1) (para 1 of the letter) are sold between Rs. 700 to Rs. 900. These three machines are therefore admitted by the respondents to be domestic machines. Looking into the catalogue of these machines-knit fab.' (Janta Model) it has 200 needles, weight and other details are not given. Of the Knit Master-'Model KM 100 has 180 needles and Model KM 200 has 200 needles and weight is 10.5 kgs. Renew has 200 needles and weight 9,5 kgs. Model DX 200 has 200 needles and its Gross net/weight is 10.7/12.5 kgs. Now the number of needles- subject model and other 3 models are alike. Weight is mostly the same. Both the types work manually though subject model can also be worked with power. When number of needles in two types is the same and they are worked manually, even with adjustment of switches or control, the performance of subject machine would be similar and in any case, the improvement in performance over the other three models could at best be marginal.

20. The only point of difference that the respondents have urged in the letter is that DX 2000 cost Rs. 3,500 whereas the other three models of other manufacturers cost between Rs. 700 to Rs. 900. At the material time price of subject model was Rs. 1000. The price difference could be due to a variety of reasons, respondents have a bigger organisation and overhead charges may be more, more advertisement, use of imported parts and the like. The fact however stands out that the subject machine in material points is similar to three models of different manufacturers and these three models are admitted by the respondents to be domestic.

21. The Collector (Appeals) in support of his finding relied on the fact that the Machine was being used on a large scale at Ludhiana in cottage industries. We do not know on what basis this observation was made. Evidence if any in support of this conclusion is not before us.

As against this, the learned Sr. D.R. for the appellant contends that every household in North-Eastern States has a machine like the subject model or the model itself. Again the contention is without any evidence. All this takes us

nowhere. As to whether a machine being used in cottage industry ceases to be domestic, we would deal with later.

22. Dealing with the purchase orders and certificates filed by the respondents, they have filed two purchase orders dated 30-9-1981 (not 31) from M/s. Canteen Stores Department for 10 numbers of Model DX 2000 and from UNICEF, New Delhi dated 24-3-1981 for 20 pieces of the same.

These orders are not in the least helpful for deciding whether the machine is domestic or otherwise. They only show that the two establishments purchased these machines. But for what purpose the machines were used cannot be ascertained from these orders. All the five certificates are dated 7-8-1982. The first from Anand Women Rehabilitation Society, Delhi, says that the machines are used for by the Association for providing self-employment to the economically weaker Section of the population for supplementing the family income.

The certificate from Samuday Bhavan in Hindi is to the same effect. It says that with the machine women for themselves and their family can earn their livelihood. M/s, Sawhney Wool's certificate is more to the point. It says that women take wool from them and after knitting bring back and run their houses well. The certificate from M/s. Manachari Hosiery also in Hindi is to the same effect. Mahila Silpakala Vidyalaya's certificate says that the machine provides self-employment to economically weaker sections of the population. All these certificates only show that with this machine women work in their houses and do knitting work and supplement their income. These certificates rather than show that the machine is industrial only show that it is domestic because it is worked by the house wife in her home.

These certificates do not help the respondents-they go against them.

23. Considerable arguments were advanced that the machine is used in cottage industry. On this point except reference in the Collector's order to Ludhiana to which we have already referred, there is no evidence on either side. Cottage Industry only means an industry partly or wholly carried on at home. If with the machine a house wife at her home .is able to produce something more than the

requirement of the family and supplement the family income, this would not take out the machine from the purview of domestic if it is really so. We have already said above that the machine to us appears to be domestic. Even if it is used in cottage industry this would not make any difference for the purpose of its classification under the Customs.

24. Apart from the above, the notes on heading 84.37 in C.C.C.N. show that the heading also covers small domestic knitting machines. Customs Tariff is based on the C.C.C.N. and the Tribunal has taken the view that the notes on C.C.C.N. have persuasive value. These notes would also go against the respondents. Apart from this, the decision of the Tribunal in *Kanwar Sewing Machine Co. v. Collector of Customs, Bombay* (1983 E.L.T. 804), holds that domestic sewing machine would for the purpose of heading 84.41 embrace within its scope such sewing machine as are used in houses or by tailors or dress makers etc. While Shri Narasimhan, learned Advocate for the respondents tried to distinguish this decision by explaining that it was based on C.C.C.N. notes in which there was distinction between domestic sewing machine and industrial sewing machine and no such distinction existed in the notes about the knitting machines, we think that the distinction pointed out is merely academic. It does not affect the domestic nature of the respondents machine.

25. In view of the foregoing, we set aside the order passed by the Collector of Customs (Appeals) and restore that of the Assistant Collector of Customs (Refund), Bombay. The appeals are thus allowed.

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