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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-04-2000

Reported in : (2000)(119)ELT629TriDel

Appellant : Dairy Development Corp.

Respondent : Collector of Customs

Judgement :

1. In this appeal filed by M/s Dairy Development Commission, Maharashtra, the issue involved is whether Bulk Butter Packing Machine, imported by them, is classifiable under sub-Heading 8434.20 of the First Schedule to the Customs Tariff Act read with Notification No.59/87-Cus., as sought by the Appellants or under Heading 84.22 of the Tariff, as ordered by the Commissioner of Customs, under the Impugned Order dated 8-1-1992.

2. The Authorised Counsel for the Appellants, in their letter dated 26-12-1999, has requested for adjournment of the hearing as he has not recovered from the joints problem. We observe that the hearing of the Appeal is being adjourned since June 1999 on the request of the learned Counsel for the Appellants. Last time hearing was adjourned on 16-11-1999 and it was made clear to the Learned Counsel that the hearing was being adjourned as a last chance. In view of this, we do not accede to the request for adjournment and proceed with the disposal of appeal after hearing Learned DR and persuing the records.

3. Shri Jagdish Singh, Learned D.R., mentioned that the main argument of the Appellants is that as the impugned machine moulds the butter into the required Commercial Shapes, it will be classifiable under Heading 84.34 of the C.T.A. He submitted that the impugned machine is an automatic butter milk packing machine, that the butter is compressed between the outlet nozzle plate and the package bottom and the container xxx xxx is filled progressively as the sleigh goes back under the pushing pressure; that it is apparent from the functioning of the impugned machine that it is basically meant for filling the container after moulding them and as such is covered by Heading 84.22. He also referred to H.S.N. Explanatory Notes below Heading 84.22 which clearly provides that "Machine which in addition to packing wrapping, etc., also perform other operations remain classified in the Heading provided the additional operations are incidental to the packing, etc." 4. We have considered the submissions of the Learned D.R. and perused the records. The Appellants have emphasised that the impugned machine is to be classified under Heading 84.34 as it is a dairy machine and that since it is specifically designed for bulk butter packing and it cannot be used for any other purpose than bulk butter packing, it is only a dairy machine. It is an admitted fact that the machine is for the purpose of packing the butter. The rival Headings reads as under:84.34 Milking machines and dairy machinery.

8434.10 - Milking machine 25% 8434.20 - Dairy Machinery 25% 8434.90 - Parts 25%84.22 Dish washing machines; machinery for cleaning or dry- ing bottles or other containers; machinery for filling, clos- ing, sealing or labelling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar containers other packing or wrapping ma- chinery (including heat-shrink wrapping machinery); machinery for aerating beverages.8422.10 - Dish washing machines 18%8422.80 - Other 13%8422.90 - Parts 13% 5. According to the Explanatory Notes of HSN under Heading 84.34, the Heading covers machines used for the manufacture of butter or cheese and these include "machines for moulding butter into the required" commercial shapes, but not including machines which also wrap or weigh the product (Heading 84.22 and 84.23). We further observe that Heading 84.22 applies, in addition, to machinery for filling, closing, sealing, capsuling or labelling bottles, can, boxes, bags or other containers; to "Other packing or wrapping machinery." It is thus apparant that packing machinery

is covered by this Heading of the Customs Tariff. The Explanatory Notes under Heading 84.22 clearly mentions that "the Heading includes machines incorporating devices, which, as a secondary function, cut, mould or press previously prepared products into purely presentational forms without affecting their essential character (e.g.

machines for moulding butter or margarine into blocks, etc. and wrapping them.)" The appellants have themselves mentioned in their Memorandum of Appeals that the impugned machine is a butter packing machinery and as such its classification under Heading 84.22 of C.T.A.has been rightly done by the Commissioner. We therefore do not find any reason to interfere with the impugned order and reject the appeal.

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