Stefab (i) Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-15-2000

Reported in : (2000)(120)ELT86TriDel

Appellant : Stefab (i) Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The issue involved in this appeal filed by M/s. Stefab India Ltd. is whether the Washing Machines manufactured by them are classifiable under Heading No. 84.51 of the Schedule to the Central Excise Tariff Act, as claimed by them, or under Heading 84.50 as Ordered by the Commissioner (Appeals), in the impugned Order dated 23-5-1996.

2.1 Shri M. Chandrasekharan, learned senior Counsel, mentioned that the Appellants manufacture machines for washing (stone washing, enzyme washing, acid washing) dyeing, bleaching, etc.; that these machines have been since 1985 described as industrial Washing Machines and were classified under Tariff Item 68 of the erstwhile Central Excise Tariff and Heading 84.51 of the Present Tariff; that a show cause notice dt.

19-10-93 was issued to them for changing the classification of washing machines to Heading 84.50 and for demanding duty short paid during the period April 1993 to September 1993 on the ground that the washing machine were mainly supplied to hotels and hospitals, etc. and as such are laundry type washing machine; that the Assistant Collector, however, classified their product under Heading 84.51, in Adjudication Order No. 67/94 dt. 16-9-94 holding that there were both functional and constructional differences between the impugned washing machine and to household or laundry type machine; that on appeal, Commissioner (Appeals) classified the impugned product under Heading 84.50 of the Tariff holding that these are laundry type washing machines. The learned Sr. counsel submitted that the Chief Commissioner, Delhi had examined the classification of the impugned goods and had agreed with the view that these were classifiable under Heading 84.51; that his views were communicated to the Commissioners at Delhi, Chandigarh and Jaipur for information and necesary action; that the Department cannot argue against the classification found correct by the Chief Commissioners. He, further, mentioned that other units producing similar goods in the Commissionerate, of Delhi, Harayana and Rajasthan, are allowed to classify them under heading 84.51 which is discriminatory. The learned Sr. Counsel mentioned that the Appellants had filed a petition in Delhi High Court challenging the Stay Order passed by the CEGAT. The Delhi High Court in Stefab India Ltd. v.U.O.I., 1997 (96) E.L.T. 248 (Del) directed the Tribunal to hear the appeal without insisting upon any deposit on account of non-consideration of Vital and relevant facts i.e. Order of the Assistant Collector in their favour, communication from the office of the Chief Commissioner and the averment that other similar manufactures were being given the benefit of classification under 84.51. He contended that these are vital facts for deciding the appeals also. He also relied upon the decision in Steel Authority of India v. CC Bombay, 2000 (115) E.L.T. 42 (S.C.) wherein Supreme Court held that it is hardly to be supposed that the Customs authorities can take one stand in one State and another stand in other State. The Trade notice issued by one Customs House must bind all Customs authorities." 2.2 The learned Senior Counsel also submitted that these Washing machines are purely for industrial use; that majority of them are used by garment/textile process houses for treating textile made up articles, that their machines are also adapted by hotels, hospitals etc. for bleaching, disinfecting, starching, besides soap washing and rinsing; that it has even been admitted by the Collector, in his Review Order under Section 35E of the Central Excise Act, that the washing machines manufactured by them are used in laundry, Garment apparel manufactures, textile/made up processing hotels, hospitals & defence establishments, that Heading 84.51 applies to Washing machines which perform functions, in addition to the functions performed by the washing machines falling under Heading 84.50 of the Tariff; that this is evident from the exclusion of machinery of 84.50 in Heading 84.51 of the Tariff. He also mentioned that Collector in Review Order has admitted that impugned machines are capable of bleaching, dyeing and speciality washes like stone wash, acid wash, etc., beside soap wash.

3. He emphasised that their machines differ from household or laundry type washing machines, structurally and functionally; that the capacity of household washing machine is only 5 Kg whereas the capacity of their machine ranges from 25 Kg to 100 Kg.; the dimension of household washing machine is much less in comparison to their washing machines; that as against weight of 75 Kgs of household washing machines, the weight of their machines ranges from 780 Kg to 1630 Kg; their machines are capable of dyeing requiring a high liquor ratio whereas on account of open type construction, in household or laundry type washing machines, dyeing cannot be done; their machines have inspection windows permitting taking out of articles being dyed, bleached etc., whereas household or laundry type washing machines have no inspection windows; their machines have baffle compartments for special effect during snow wash which is not in household or laundry type machines. The learned Senior Counsel contended that it is not known as to what is the basis of the assumption made by the Commissioner (Appeals) that the principal function of the impugned machine is washing; that no basis has been disclosed to make such an observation; that these machines have special features which make them specifically suitable for carrying out speciality process such as bleaching, dying, enzyme washing etc; that if the findings of the Commissioner (Appeals) is accepted, Heading 84.51 will be redundent as the principal function of washing machine will be washing only. He further mentioned that the findings in the impugned Order that the impugned machines are not akin to goods of Heading 84.51 as they are quite distinct from the example, such as tunnel washers, festoon look washers, J-Boxes, is not tenable as these are only examples and not exhaustive; that it does not mean that there cannot be any other machine classifiable as an industrial washing machine to suit a particular class of consumers; that moreover the impugned machines

have mechanical features of the type mentioned in the Explanatory Note to Heading 84.51 in H.S.N. as they have baffle compartments/paddle lifters for obrasion effects and speciality washing like stone wash.

4. Countering the arguments, Shri Jagdish Singh, Learned D.R. submitted that from the wordings of Heading 84.51, it is apparent that any machinery which can be classified under Heading 84.50 of the Tariff, it cannot be classified under Heading 84.51 since the later heading clearly contains exclusion clause - "Other then machines of heading No.84.50" that the impugned machine performs "laundry type" functions which is evident from the fact that hospitals and Navy have purchased their machines; that further even in household washing machines, bleaching powder is used; that washing machines covered by Heading 84.51 are 'industrial-machines'. He also submitted that Heading 84.50 applies to both Household or laundry type washing machines and the Assistant Collector while classifying the impugned product has not considered whether the impugned products are laundry type' washing machines; that in fact the impugned machines are nothing but laundry type machines which are classifiable only under Heading 84.50.

5. In reply, the learned Senior Counsel mentioned that the expression laundry' has been defined in the "Shorter Oxford English Dictionary" as " 1. The action or process of washing, 2. An establishment for washing and getting up linen" and submitted that a laundry type washing machine would be restricted to the processes connected with washing only; that it follows from this that a machine which is so designed so as to capable of even one more process like dyening in addition to washing would be out of the purview of Heading 84.50 and would then automatically fall under Heading 84.51; that a place of use of the impugned machines would not be a consideration for determining the classification; that if a user uses it only for washing, it will not make it just laundry washing machine as long as it is capable of being used for processes such as bleaching and dyeing, etc., referred to in Heading 84.51. He finally submitted that majority of their user (53.3%) are garment textile processors/exporters.

6. We have considered the submissions of both the sides. The rival Headings of Central Excise Tariff are as under:"84.50 - Household or laundry type washing machines, including machines which both wash and dry. 84.51 - Machinery (other than machines of Heading No. 84.50) for washing, cleaning, wringing, drying, ironing, pressing (including fusing presses), bleaching, dyeing, dressing, finishing, coating or impregnating textile yarns, fabrics or made up textile articles and machines for applying the paste to the base fabric or other support used in the manufacture of floor coverings such as linoleum; machines for reeling, unreeling, folding cutting or pinking textile fabrics." 7. At the outset we find that there is no force in the submissions of the Ld. Senior Counsel that the Department cannot argue against the classification found to be correct by the Chief Commissioner. The letter dated 4-12-95 was neither a circular nor instruction as this letter merely informs that the views expressed by the Commissioner Delhi regarding classification of washing machines in reply to Draft Audit Para had been endorsed by the Chief Commissioner Delhi and similar washing machine to be classified similarly. This, it appears to us, was simply an administrative letter and not an instruction. Further it is also well settled that in a particular case direction cannot be given to either the adjudicating authority or the appellate authority to decide the classification in a particular manner in exercise of quasi judicial functions. The decision of Delhi High Court, referred to by the Appellants, makes it very clear that the High Court was considering the effect of non-consideration of the vital and relevant facts for the purpose of staying the recovery under Section 35F of the Act. Certainly the Order of the Assistant Collector in favour of the Appellants cannot be a vital fact for deciding the 8. Coming to the merits of the case, we find that the Appellants have submitted that the washing machines manufactured by them are used, besides washing, for bleaching, dyeing etc. The learned Sr. Counsel has drawn our attention to the processes which could be undertaken by the impugned machines such as Dyeing of garments, fabric, bleaching of garments, fabric, stonewash effect using chemicals, removal of tracing marks, bleaching of new white cotton garments with tracing marks, disinfecting and removal of blood stains, paint stains, etc. The learned DR has, on the other hand, emphasised that these machines are nothing but washing machines covered by Heading 84.50 as bleaching powder is used in household or laundry type washing machine also. As

per Explanatory Notes of HSN, Heading 84.50 covers household or laundry type washing machines; they include paddle, or rotating cylinders for keeping the liquid circulating through the contents, or sometimes a device to give high frequency vibrations to the liquid. The Heading also covers machines which both wash and dry. In respect of Heading 84.51, Explanatory Notes of H.S.N. reads as under : (I) For the washing, bleaching, wringing, cleaning, ironing, dyeing, drying or the like of textile yarns, fabrics or made up textile articles, but excluding household 'or laundry-type washing machines (heading 84.50) (II) For the dressing or finishing of yarns or fabrics, after spinning or weaving respectively, to bring out certain qualities or improve their appearances (e.g., shearing, fulling, lustrings), or to give them special new qualities (e.g. by impregnating or coating), but excluding machines for the finishing of felt (heading 84.49) (III) For the reeling, unreeling, folding, cutting or pinking of textile fabrics." 9. It is thus apparant that machines for washing, bleaching or dyeing would fall within the scope of Heading 84.51. This view is also strengthened from the fact that in H.S.N. as well as in Customs Tariff, there is a Sub-Heading 8451.40 which reads as under: However the H.S.N. Notes provides that to fall in Heading 84.51, the apparatus must have mechanical features mentioned therein and must be clearly intended for treating textiles. It is not in dispute that the impugned machines are intended for treating textiles. The mechanical features are such as rollers for leading in the Yarn or fabric or for squeezing out excess liquid stirring paddles, etc. The H.S.N.Explanatory Notes have further provided mechanical features for Bleaching or Dyeing Machinery. These include J. Boxes used in bleaching or other wet finishing operations; they consist essentially of a vertical two armed container, shaped like a letter J, fitted with internal steam jets and with rollers to guide the cloth. Other machines of bleaching or Dying group are mainly vat type machines adapted for dealing with particular types of textile goods. The group also includes machines for dyeing or dressing textile piece goods in open width. It has been mentioned in H.S.N. that essential feature of these machines is that they incorporate a set of rollers for squeezing out excess liquid. We do not find any findings by the Assistant Collector about the presence of esential mechnical features which will make the impugned machines different from the Washing machine of Heading 84.50.

The weight and capacity of the machine are not relevant factors for the purpose of classifying the goods under Headings 84.50 and 84.51. In H.S.N. as well as in Customs Tariff both these Headings have been divided further into Sub-Headings. Sub-heading 8450.20 applies to Machines, each of a dry linen capacity exceeding 10 Kg. On the other hand, Sub-heading 8451.21 covers Drying machines of capacity not exceeding 10Kg. The Commissioner Appeals, no doubt, has referred to the Explanatory Notes, in the impugned Orders, and given a clear findings that the impugned goods do not contain mechanical features of the type mentioned in H.S.N. The learned Sr. Counsel has not rebutted the findings of the Commissioner except mentioning that these machines have baffle Compartments/paddle lifters. Household or laundry type washing machines do also have paddles. The constructional differences mentioned by the Appellants between their machines and household or laundry type machine do not satisfy the test of mechanical features which are essential to place any washing machine under Heading 84.51. Accordingly we hold that washing machines manufactured by the appellants are classifiable under Heading 84.50 and as such their appeal is rejected.