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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-17-1984

Reported in : (1985)LC238Tri(Delhi)

Appellant : Nectarine Pharmacy

Respondent : Collector of Customs

Judgement :

1. This is a revision application filed before the Government of India which on transfer is being treated as an appeal. Aggrieved by the order of the Appellate Collector of Customs, New Delhi, in his Order No.1407/78 dated 1-9-78, the appellants have preferred this revision.

2. The appellants imported a Markem capsule and tablet printing machine from M/s. Markem Corporation, Keene, N.H. USA. They presented a bill of entry No. 11539 dated 16-11-76 at Customs Air-cargo Unit, Palam, New Delhi. They sought clearance of the machine in question under Customs Tariff Head No. 84.34 assessable at 40%. The Assistant Collector assessed the item under Tariff Heading No. 84.59(1) at 60%. An appeal was preferred to the Appellate Collector who confirmed the order of the Asstt. Collector. Shri Prem Sehgal, Managing Partner of the Appellants firm submitted that the machine under import should have been classified under the most specific heading 84.34. The tablets and capsules printing machine can print name or monogram on capsules, tablets, lozenges, candies or sugar coated gum by high quality off-set gravure method. The printing machine is bench or table mounted and is a composite machine in

every respect for instant operation as it is equipped with one gravure reservoir assembly, two off-set rolls, one off-set roll air Nozzle anc one feed disc complete for one tablet or capsule size and shape and above al it has integral variable-speed drive motor, air assisted rotary feed, power suppl; cord and switches all in-built with the machine itself. The Explanatory Note to B.T.N.Vol. 3, Second Edition 1966, the Tariff Heading 84.34 reads as follows :- "This heading is restricted to such equipment of a kind used in the printing of texts or illustrations (etc.); whether on paper or sometimes on other material, by the normal printing processes; viz.

:- (1) Relief printing; by means of type characters, stereotype or Electrotype plates, wood engravings or by using relief photograved plates. .

(2) Planographic printing by lithography, photolithography or by off-set printing....

(3) Intaglio printing : By photogravure or retogravure or by means of etched or engraved metal plates..." It is submitted that the term "or sometimes on other materials would indicate that it would include printing on tablets or capsules, etc. It is urged that the heading more appropriate would be 84.34, than the "not otherwise specified Heading 84.59". Shri K. Chandramouli, SDR, argued that Heading 84.34 made specific mention of machinery; apparatus and accessories for type-founding or typesetting machinery, other than the machine tools for preparing or working printing blocks, plates or cylinders, etc. etc. He also argued that since this item is not typefounding or typesetting machinery, Heading 84.34 would not apply.

He placed reliance on the BTN Explanation where the Heading 84.34 is expressly restricted to the equipment used in printing of text or illustrations.

3. For the purpose of clarification it is necessary to reproduce the two contending Headings :---Heading Sub-heading No. and Rate of duty C.E.T.No. description of article (a) Standard Item (b) Preferen---(1) (2) (3) (4)---84.34 Machinery, apparatus and accesso- (a) 40% 17 ries for type-founding or type-setting 26A machinery, other than the machine 26B tools of Heading No. 84.45/48, for (1) Not

elsewhere specified.

(a) 60% (2) Machines and mechani- (b) 40% cal appliances designed for the 4. The pamphlet filed by the party describes the printing method as follows :- "The Model 156A Mk II prints by offset gravure. Monograms or trademarks are etched on the surface of a gravure roll. The etched areas are filled with ink. A Pal (Carbon steel) injector razor blade 'doctors' extra ink from the gravure roll surface, leaving ink in the etched areas." The machine in question produces high quality imprints. The name or monogram is reproduced on the tablet, capsules, loznges, etc., by off-set gravure method. The metal is clipped with off-set rollers for printing a tablet and is equipped with the gravure reservoir assembly.

Considering the method of working, we are of the view that type-founding or typesetting contemplated under Heading 84.34 is totally absent. Further, Heading 84.34 expressly excludes machinery for working printing blocks, plates or cylinders. The explanation to the BTN referred to by the Appellate Collector indicates that Heading 84.34 would apply mainly to equipment used in the printing of text or illustrations whether on paper or sometimes on other materials. So, we do not accept the contention of the appellants that the item should be classified more appropriately under Heading 84.34. Of course, it was pointed out that in respect of Bill of Entry No. 628/63 dated 22-3-63, a similar machinery imported by another manufacturer was classified under Indian Customs Tariff Item 72(b). But we do not think that this aspect has any significance in the absence of proof as to the nature of the machinery imported. Further, there is no estoppel in taxation matters and it is the duty of the Tribunal to classify the goods under the appropriate heading, based on the evidence and proof adduced before the Tribunal.

5. The decision of the Tribunal in Order No. 384/84-B dated 9-5-84 holds that the Tribunal has to arrive at the appropriate Heading. Of course, it is subject to following the procedure set out in the Act. In this case we have already held that 84.34 will not apply. We are also of the view that the residuary Heading 84.59 will not arise unless there is any other Heading under which the imported items could be classified. We find that Heading 84.35 reads as

follows:---Heading Sub-heading No. and Rate of CentralNo. description of article duty Excise (a) Standard Tariff---84.35 Other printing machinery; (a) 40% machinery for uses 6. In this case from the brochure submitted by the appellants it is manifest that the imported item is a printing machinery. It is used for the purpose of printing the monogram or name of the particular capsule or tablet on the item by high quality off-set garvure method. Under Rule 3 of the Rules for the Interpretation of the First Schedule to the Import Tariff "Heading which provides the most specific description shall be preferred to headings providing the more general description".

Applying this test, we held that the machinery in question could be more appropriately classified under Heading 84.35.

7. The impugned order is, therefore, set aside and the item imported is directed to be classified under Heading 84.35.