

Collector of Central Excise Vs. Electro Mech Engineering

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-11-2000

Reported in : (2001)(130)ELT805TriDel

Appellant : Collector of Central Excise

Respondent : Electro Mech Engineering

Judgement :

1. Revenue has filed this appeal against an order of Collector (Appeals) who has classified a Domestic Flour Mill without electrical motor under Heading 8437 which is manufactured by the Respondents.

2. The grounds taken by revenue in appeal are; (a) Domestic Flour Mill without electrical motor after (sic) is correctly classifiable under Heading 85.09 because there is a place for electrical motor inside and it cannot be used without the same. The manufacturer does not provide the Motor on commercial grounds, which are not relevant for considering the classification. The decisions supply relied upon by the Collector (Appeals) apply to the Tariff prior to 1985 and the same is not relevant, since Chapter 85 Note 3 provides that Heading 85.09 covers electro mechanical machines of the kind commonly used for domestic purposes wherein food grinders and mixtures find mention without any weight restrictions.

(b) The flour mill under consideration heading is a small type of grinding mill and Heading 8437 covers machinery for milling industries for the production of flour and meals this type of grinding mills are excluded.

(c) The finished products i.e. the 'flour mill with electric motor' cannot be considered as farm type grinding mill, as it is described as Domestic Flour Mill and Heading 84.36 is not appropriate.

(d) Domestic Flour mills supplied without a Motor are to be considered as a part of complete domestic flour mills and the same is to be assessed as such as per Note 2 Section XVI according to the same part of domestic appliances would fall under Heading 85.09 when the item is placed for fitment of motor. Rule 2(a) of Interpretation Rules is applicable in the present case, and applying the same the incomplete or unfinished goods in the present case acquire complete essential character of domestic flour mills classifiable under 85.09.

3. (a) The respondents have submitted that the item being manufactured by them was, and its classification was disputed by the Department and the matter was taken up in appeals where in classification under 85.09 was confirmed relying upon Work Well Engineering Company - 1994 (72) E.L.T. 222.

(b) They submitted that they have asked, for classification under Heading 84.37 for the item with or without electric motor, based on Circular No. 82/82/94-CX, dated 5-12-1994 issued by CBEC, this circular was of the Board was not considered by the Tribunal, in their case, when relying upon the decision in the case of Work Well Engineering supra; the Tariff advice regarding classification were binding on the Departments as per the series of decision of the Hon'ble Supreme Court.

(c) The goods in question are excluded from Heading 85.09, under Note 3(b) of Chapter 85 as they are neither Vacuum Cleaner, Food Grinding and Mixers and Fruit or Vegetables Juicers used in home; they are not covered under Note 3(a) of Chapter as the weight of the item even without electric motor is about 25 Kgs and with the motor, it is more than 30 Kgs and therefore, it is excluded from Heading 85.09 and would be covered under 84.37.

(a) The HSN Notes under 85.09 provided as follows "This heading covers a number of domestic appliances in which an electric motor is incorporated. The term "domestic appliances" in this heading means appliances normally used in the household. These appliances are identifiable, according to type, by one or more

characteristics features such as overall dimensions, design, capacity, volume. The yardstick for judging these characteristics is that the appliances in question must not operate at a level in excess of household requirements.

"Subject to the exclusions and in appropriate cases the limitation of weight given in Chapter Note 3, the heading covers apparatus which fulfil the above criteria. The heading does not cover appliances driven by a separate electric motor (whether by means of a flexible shaft, transmission belts or other transmission equipment), nor appliances which, though similar in construction and use, are clearly intended solely for industrial use (e.g. in the foods industries, in chimney sweeping, machine cleaning or road cleaning); these are classified in general, in Heading 82.10 or in Chapter 84". In the present case we agree with the Respondents submissions that their appliances is driven by a separate electric motor by means of transmission belts therefore, the same would be excluded from 85.09 under which the Department want the classification. Heading 84.37 would cover this kind of grinders. We also find that Work Well Engineers case 1994 (72) E.L.T. 222 (T) has not considered this aspect of 'drive mechanism' of the product under dispute. This feature of the drive would determine the eligibility or exclusion under 85.09. In the present case this factual aspect is vital and not determined, it is required to be determined, and for that purpose the matter is required to be remanded back to the original authority to redetermine the nature of drive which is being used to transferring the energy from the motor to grinding mechanism.

(b) We also find that there is considerable force in the argument that Revenue cannot depart from the Classification Circulars issued by them and it is now trite law, that Board's Circular bind the Revenue. The present Circular cited F.No. 82/82/94-CX., dated 5-12-1994 is specific for classification of domestic flour mill without motor under 84.37 the item herein. This Circular has also to be considered by the lower authorities and a finding arrived at by them, as to why the same is not applicable. Since we are to remand this matter, this Circular should be also considered by the authority in the remand proceedings.

5. In view of our findings we allow the Revenue appeal as remand for de novo adjudication by the original authority by setting aside the order.

Ordered accordingly.

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