

Moped Assembly Vs. Commissioner of Central Excise

Moped Assembly Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/20145

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Dec-22-2000

Reported in : (2001)(129)ELT195Tri(Chennai)

Appellant : Moped Assembly

Respondent : Commissioner of Central Excise

Judgement :

1. Appellant has filed this appeal against the denial of the benefit of exemption Notification 111/88-C.E., dated 1-3-1988 in respect of items of machinery for cleaning, sorting or grading or dried leguminous vegetables; machinery used in the milling industry or for working of cereals or dried leguminous vegetables.

2. The facts of the case briefly stated are that the appellants are engaged in the manufacture rice-milling machinery with sheet metal components. They filed classification list claiming classification under Chapter Heading 84.37. Prior to the issue of Exemption Notification No. 111/88-C.E., the department approved classification of the goods under Chapter Heading 84.37. However, when the appellants filed fresh classification list after issue of Notification No.111/88-C.E., the department held that the items manufactured by the appellants were not classifiable as parts exclusively for ricemilling machinery and denied them the benefit of this notification. The adjudicating authority denied them the benefit on the ground that in terms of Chapter Note 2 of Chapter 84 of Section XVI, the items manufactured by them were classifiable under a different chapter heading and not under Chapter Heading 84.37. In appeal, the learned Collector (Appeals) upheld

the classification orders of the adjudicating authority and hence this appeal before us.

3. Arguing the case of the appellants, Shri N. Krisnamurthy, learned Consultant submits that the appellants had been manufacturing same items before 1-3-1988 and after 1-3-1988. He submits that the department did not raise any objection in the classification of the items before 1-3-1988. But when the exemption Notification No.111/88-C.E., came into existence, the department observed and held that the items in question were not classifiable under Heading 84.37 and therefore exemption notification cited above was not applicable to the goods manufactured by them. He submits that chapter note 2 of Chapter 84 of Section XVI is applicable to the goods manufactured by the appellants inasmuch as the goods were machinery used in the milling industry. He submits and emphasises that the appellants were manufacturing only these goods meant for rice-milling industry. He submits that since the goods were exclusively used for the rice-milling industries, therefore they are appropriately classifiable under Chapter Heading 84.37 and also entitled to the benefit of exemption Notification No. 111/88-C.E. He submits that if Chapter Notes 3 and 4 following chapter note 2 are scrutinised it would be seen that they are fully applicable to the appellants and therefore the goods warranted classification under Chapter 84.37. He also submits that the learned Collector (Appeals) in his order in para 4 has observed that "the impugned items are meant for their exclusive use in these rice mill machines". Therefore, he submits that this observation of the Collector (Appeals) supports their case not only for classification but also for admissibility of the benefit of exemption Notification No. 118/88-C.E. The learned Consultant also refers to the judgment of this Tribunal in the case of Thertnax Ltd. v. CCE as reported in 1996 (81) E.L.T. 417 and observed that complex systems incorporating many devices and having multiple use and not purely of agricultural machinery for storage used mostly by milling industries is classifiable under Heading 84.37 of the CET, 1985 and eligible for the benefit of Exemption Notification No.111/88-C.E. He therefore, prays that in view of the fact that the goods manufactured by them were exclusively used in the milling industry and in view of the fact that chapter notes 3 and 4 support the appellants and in view of the fact that the Tribunal while examining the applicability and classification of the certain machinery held that if these items are meant for a

particular type of machinery, then they will be classifiable under Heading 84.37 and the benefit of Notification No. 111/88-C.E., shall be available to the appellants and the appeal may be allowed.

4. Shri S. Kannan, learned DR reiterates the findings of the authorities below.

5. We have heard the arguments of the learned Consultant for the appellants and also perused the evidence on record. We note that the appellants have been filing classification list prior to 1-3-1988 and subsequent to 1-3-1988. We note that in both these classification lists the description of the goods was same and the description conformed to the description given against Chapter Heading 84.37 in the table annexed to the Notification No. 111/88-C.E. We find that the objection that the goods were different and were generally used were taken by the authorities only when the appellants claimed the benefit of Notification No. 111/88-C.E. We have gone through the chapter notes 2 to 4 and we note that chapter notes 3 and 4 of Chapter 84 supports the view of the appellants. We have also gone through the observation of the Collector (Appeals). We find that in para 4 of his order, he held that the sheet metal components manufactured by the appellants were exclusively for use in the rice-milling industries. Thus we find that these observations of the Collector (Appeals) support the view of the appellants that the goods are classifiable under Heading 84.37.

6. We have also perused the case law cited and relied upon by the learned Consultant in the case of *Thermax Ltd. v. CCE* (supra) we find that identical view was expressed by this Tribunal after examining the technical literature, pamphlet and catalogue stating that if certain goods in complex machinery may be for exclusive use and if the goods are exclusively used in the rice-milling industry, then they will be classifiable under Heading 84.37.

7. In view of the above, we hold that the goods manufactured by the appellants are classifiable under Chapter Heading 84.37 and further that these goods will be entitled to the benefit of Exemption Notification No. 111/88-C.E. The appeal is allowed in the above terms.