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Swajit Engineering Pvt. Ltd. Vs. Commissioner of Cen. Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-25-2001

Reported in : (2002)(147)ELT640Tri(Mum.)bai

Appellant : Swajit Engineering Pvt. Ltd.

Respondent : Commissioner of Cen. Excise,

Judgement :
1. Duty of Rs. 3.87 lakhs has been demanded, on the ground that Slats which are part of conveyors used for carrying sugar cane are correctly classifiable under chapter heading 84.31 and not under chapter heading 8428.00 as classified by the assessee.

3. We are not, prima facie, convinced by the contention of the assessee that the goods have been correctly classified under chapter heading 84.28 Chapter heading 84.31 covers parts of goods classifiable under heading 84.25 to 84.30. The assessee's contention suggests that this heading only applies to such goods as parts of goods classifiable under heading 84.25. This is prima facie unacceptable in terms of section note 2(a) to Section XVI of Chapter 84.

4. The next contention is that once the classification is approved under chapter heading 84.28, notice for recovery of the amount cannot be issued under classification modified later by Section 35E of the Act. On this, we find some force in the light of judgements of the Supreme Court in Union of India & others vs Madhumilan Syntex Pvt. Ltd. [1988 (35) ELT 349] and Elson Machines Pvt. Ltd. vs

CCE [1988 (38) ELT 571]. We, therefore, direct the applicant to deposit Rs. 1.5 lakhs (Rupees One lakh fifty thousand) within two months from the date of the order and on such deposit, we waive the remaining duty and stay its recovery.

5. The order of the Superintendent of Central Excise, Aurangabad dated 22.3.2001 detaining the shearing machine in the possession of the applicant shall thereupon stand vacated.

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