**Commissioner of Central Excise, Vs. Epc Irrigation**

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**SooperKanoon Citation** : sooperkanoon.com/27182

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Jan-09-2002

**Reported in** : (2002)LC183Tri(Mum.)bai

**Judge** : S T Gowri, G Srinivasan

**Appellant** : Commissioner of Central Excise,

**Respondent** : Epc Irrigation

**Judgement** :

1. These two appeals, one by the department and the other by the assessee, are against the order of the Commissioner (Appeals), Pune.

The department's appeal is against the finding in that order that parts of the irrigation system that the respondent manufactured are correctly classifiable in Heading 84.24. This at the relevant time read, inter alia, "Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders." The assessee's appeal is against that portion of the order in which he has held that the tubes and pipes of plastics that it manufactured are classifiable in Heading 3917.00 as tubes and pipes of plastics.

2. The question of classification of irrigation systems and pipes for use in such system was considered by the Tribunal in Elgi Ultra Appliances Ltd. v. CCE [2001 (134) E..L.T. 245 (T) - 1999 (35) RLT 175]. In that decision, the Tribunal held that parts such as spray nozzles, sprayer heads etc. which would form components of

an irrigation system and pipes (distribution & branch lines and surface net work used to convey the water from the control station to the irrigation zone and thereafter into the drippers) would be classifiable under Heading 84.24 and would be entitled to the benefit of exemption contained in Notification 36/96. This has been followed in the decision of the Tribunal in Hallmark Industries v. CCE - 2000 (122) E.L.T. 540; Flow Tech Power v. CCE [2001 (130) E.L.T. 541 (T) = 2001 (42) RLT 220 and EPC Irrigation Ltd. and Anr. v. CC & C.E. [2002 (139) E.L.T. 84 (T) - 2001 (47) RLT 369. In the last decision, the Tribunal said - "If the plastic pipes which were manufactured with the intention of being used as component parts of irrigation systems and they are in fact so supplied, along with other components of such an irrigation system, they would be entitled to classification under Heading 84.24. If cither the intention or the fact of supply against such a system is not present they would be classifiable under the appropriate heading, in this case under Chapter 39. Whether these two requirements are satisfied would have to be considered in each case." 3. Therefore, subject to this test being fulfilled, the classification claimed by the appellant of the plastic tubes would have to be allowed.

The department's appeal questions both the classification of pipes and tubes and the other parts determined by the Commissioner (Appeals), We are unable to see why the department has come up in appeal against the order of the Commissioner (Appeals) classifying the pipes under Heading 39.17. He has, in his order, confirmed the classification under this treading of these pipes arrived at by the Assistant Collector whose order has been appealed to him. The department's appeal asking for the classification determined by the Commissioner to be set aside and restoring the classification determined by the Assistant Collector is meaningless. In any event the classification of these goods has already been decided earlier in this order.

4. The appeal questions the classification of the other parts on the ground that the Commissioner has not specified which parts are identifiable as parts of an irrigation system and hence classifiable in Heading 84.24.

5. Apart from pipes and tubes, the show cause notice issued to the assessee was concerned with fittings for drip laterals and irrigation lines; drip start connectors; fittings for drip mains/sub-mains; sprinkler of various types and capacities; and fittings for sprinkler lines. The order dated 21-8-1995 of the Collector, Aurangabad, which mentions these items, has held them to be classifiable in Heading 84.24 as identifiable components of an irrigation system. The Commissioner (Appeals) has adopted the reasoning and the conclusion contained in this order. The department's objection is therefore answered.