

Commissioner of Central Excise Vs. Autofil Machine Co.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-29-2003

Judge : A Wadhwa, S T S.S.

Appellant : Commissioner of Central Excise

Respondent : Autofil Machine Co.

Judgement :

1. The Revenue has come in appeal against the following finding of the Commissioner:- "On close scrutiny of the case record, descriptions of the impugned products and memorandum of cross objection filed by the party it is observed that the Commissioner C. Ex. Mumbai-II as well as the A.C.C.Ex.Div.II, Mumbai II have not put forth any specific reasons or ruling/authority for classifying the products viz.packing salt conveyor under Chapter Sub-heading 8428.00 @ 10% Adv. and classifying the products viz. Packing Plugging Tablets, packing Inspection Table and packing turn table under Chapter Sub-heading 8422.90 as parts chargeable to C.Ex., duty @ 25% Adv. In terms of Notfn. No. 54/93 dt. 28.02.93. Whereas the party has produced chartered Engineer Certificate in defence of their contention tat the above products are machinery.

Further on study of Section note 4 of Section XVI of C.Ex. Tariff 1985 and considering he individual function of above products and clarification given at the foot note of Chapter Heading 84.22 at pages 1184 and 12185 of HSN Books, Explanatory note volume first Edition (1986), I am of opinion that all the above product, are machines falling under the category of "other machines" classifiable

under Chapter Sub-heading 8422.90 and are eligible for concessional rate of duty @ 10% Adv. Vide Notfn. 51/93 dt. 28.02.93.

In view of the above the appeal merits dismissal. Ordered accordingly." "The Asstt. Commr. C.Ex. Dn.II Mumbai II has approved the classification of the products namely packaging, plugging Table, Packaging Inspection Table, Packing Turn Table and Packing Salt Conveyor under chapter 8422.90. The products packaging Plugging Table, Inspection Table, and Packing Table are not machinery but spares and therefore do not come under purview of Notification No. 51/93. They are chargeable to duty @ 25% Adv. in terms of Notification No. 54/93. The product Packaging Salt Conveyor is not a product of pharmaceutical machinery but a conveyor and merits classification under Ch. 8428.00 chargeable to C.Ex. duty @ 10% Adv. in terms of Notification No. 51/93 and parts thereof under Ch.8431.00 chargeable to C.Ex. duty @ 25% adv. In terms of Notification No. 54/93 dt. 28/2/93." 2. When the matter was called, none appeared for the respondent. Shri S.S. Bhagat, learned S.D.R. appearing for Revenue did not produce any further material, before us to support the ground taken by the Commissioner in the appeal. He fairly concedes that the Chartered Engineer certificate relied upon by Commissioner (Appeals) in his order has not been commented/doubted in the Revenue's appeal.

3. It is find Revenue has suggested certain classification for the impugned goods as parts. However, to support their contention, before C.E.G.A.T. no material is placed to upset the findings of Commissioner (Appeals). On the other hand the Commissioner (Appeals) after taking into consideration the Chartered Engineer Certificate in defence of the contention that the impugned entity as machinery after relying Section Note 4 of Section xvi of Central Excise Tariff Act, 1985. Therefore he has arrived at the subject classification and the eligibility to the Notifications. Grounds in the Revenues appeal on the other hand are mere state merits and presumptions, without any material to support the same. In this view of the matter, we find that the Commissioner (Appeals) order arrived at cannot be assailed on the grounds as taken by Revenue.

4. The Revenue's appeal is required to be set aside and Commissioner (Appeals) order confirmed. We order accordingly and dispose off this appeal.

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