

Commissioner of C. Ex. Vs. Servall Engineering Industries

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

Decided On : Oct-15-2003

Reported in : (2004)(168)ELT125Tri(Chennai)

Judge : S Peeran, R K Jeet

Appellant : Commissioner of C. Ex.

Respondent : Servall Engineering Industries

Judgement :

1. Both these Revenue appeals raise a common question of law and facts.

Hence they are taken up together for disposal as per law.

2. The respondents-assessees are manufacturers of paper and pulp making machines. They cleared paper making machinery batch-wise/section-wise in CKD/SKD condition and prayed for classification as paper making machinery only under chapter sub-heading 8439.10 and not as parts under subheading 8439.90. The Commissioner (Appeals) after due consideration of Rule 2(a) of Interpretative Rules accepted their case and held that the item is cleared in CKD/SKD condition and they are required to be treated as paper making machine and in this context he relied on the judgment rendered in the case of Milk-food Ltd., 1994 (71) E.L.T. 549; Mazda Packing Ltd., 1994 (69) E.L.T. 283; Walchand-nagar Industries, 1995 (79) E.L.T. 485; Indian Xerographic Systems Ltd., 1995 (80) E.L.T.3. Ld. DR reiterates the departmental view that they are parts and they are required to be

considered as parts only for classification purpose and relied on the grounds raised in the memorandum of appeal.

4. Ld. Consultant submits that when the items have reached the stage of a complete machine, then the Interpretative Rule is required to be applied and they are to be treated as a complete machinery in terms of Interpretative Rules. He, therefore, submits that Commissioner (Appeals) has not committed any error in his order. He draws support from a similar order rendered by this Bench in the case of CCE, Chennai v. Conveyor Equipments (P) Ltd., 2001 (127) E.L.T. 478 (Tri. - Chennai) and also in the case of TRF Ltd. v. CCE, Jamshedpur, 2002 (150) E.L.T.283 (Tri. - Kolkata); CCE, Delhi-III v. B.H.P. Engineers, 2000 (119) E.L.T. 599 (T); Sharp Business Machines Pvt. Ltd. v. CC, 1990 (49) E.L.T. 640 (S.C); Sipani Automobiles v. CCE, Bangalore, 2002 (150) E.L.T. 845 (Tri. - Bang.) and Hindustan Tools & Engg. Works (P) Ltd. v.CCE, Jaipur, 5. We have carefully considered the submissions and notice from Para 3 of the order which is reproduced herein below that the item has attained the stage of complete machinery which were removed in CKD/SKD condition. Hence Rule 2(a) of Interpretative Rules of Central Excise Act has been clearly applied: "3. I have carefully gone through the facts of the case, the grounds of appeal and the submissions made by the appellants during the course of personal hearing. The question to be decided in this appeal is as to whether the appellants manufactured paper making machinery in CKD/SKD condition or the parts of paper making machines. I have pursued the orders placed by the customers and the agreement entered into. From the agreements/contracts, it is clear beyond doubt that the appellants had manufactured only the paper making machinery though these were cleared in batches. Such parts and components cleared in batches and which were assembled to make a complete paper making machinery were classifiable as complete machinery and not as parts as has been held by the lower authority.

Rule 2(a) of the Interpretative Rules of the Central Excise Tariff Act, 1985 clearly explains that any reference in a heading to goods shall be taken to include a reference to those goods incomplete or unfinished, provided that the incomplete or unfinished goods have the essential character of the complete or finished goods. It shall also be taken to include a reference to those goods complete or finished (or

falling to be classified as complete or finished by virtue of this rule), removed unassembled or disassembled. In view of the above provisions the paper making machinery cleared batch-wise/Section-wise in CKD/SKD condition has to be classified as paper making machinery only under sub-heading 8439.10 and not as parts under sub-heading 8430.90. The argument of the lower authority that they cleared the goods in parts over a period of time and never cleared machinery as a whole, is not correct as the complete machinery cannot be cleared as a whole in one lot but it has to be removed only in CKD/SKD condition." 6. In terms of the judgments cited, they are to be considered as complete machinery for classification purpose and not as parts.

Therefore, there is no infirmity in the order of Commissioner (Appeals). Respectfully following the judgments cited supra which settles the issue, the impugned order is confirmed and the appeals filed by Revenue are rejected.

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