Ceat Ltd. Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-31-2003

Reported in : (2004)(163)ELT370Tri(Mum.)bai

Judge : S T Gowri, K Kumar

Appellant : Ceat Ltd.

Respondent : Commissioner of Customs

Judgement :

1. The question for consideration in this appeal is whether Banbury mixer imported by the appellant, should be classified in 8477.80 of the Customs Tariff as claimed by the importer or heading 8479.82 as decided by the adjudicating authority and confirmed by the Commissioner (Appeals).

"84.77 - Machinery for working rubber or plastics or for the manufacturer of products from these materials, not specified or included elsewhere in this chapter.

8477.51 - For moulding or rethreading pneumatic tyres or for moulding or otherwise forming inner tubes "84.79 - Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter.

8479.20 - Machinery for the extraction or preparation of animal or fixed vegetable fats or oils 8479.30 - Presses for the manufacture of particle board or fibre building board of wood or other ligneous materials and other machinery for treating wood or cork 8479.82 - Mixing, kneading, crushing, grinding, screening, sifting, homogenising, emulsifying or stirring machines 3. The contention of the counsel for the appellant are as follows. The Banbury mixer is used only to work upon rubber or plastic. It is therefore more appropriately covered by heading 84.77. Heading 84.79 is a residual entry in the chapter. Only those goods which cannot be classified in any of the heading 84.10 and 84.78 will fall for classification in that heading. The heading will only cover such machinery for general purpose and not machinery suited for a particular industry or industries.

4. The departmental representative emphasises that the goods would be classified in heading 84.71 if they can be used by one industry either rubber or plastic. Since the mixer in question is used by both, it goes out of the scope of heading 84.77 and therefore fall in heading 84.79.

5. It is not in dispute that a Banbury mixer is used mainly in the rubber and plastic industry. The McGraw Hill Dictionary of Science and Technology, third edition, says at page 149 that the Banbury mixer is used mainly in the plastic and rubber industry. The Condensed Chemical Dictionary by G.B. Hawley, 1998 edition says at page 110 that a mixer "has been widely used in the rubber industry since 1920 for high volume production. It will also accept plastic moulding powders." It is explained that the mixer is used in the appellant's laboratory to make compounded rubber. Natural rubber and/or synthetic rubber in primary form are fed into the mixer and chemicals such as accelerator are added. These are mixed by the action of the rotors in the mixer to form a homogenous wax which is extruded in the form of a sheet. It is clear from these discussions that the mixer is what exclusively used in the rubber plastic industries.

6. Heading 84.77 refers to "machinery for working rubber or plastics or for manufacture of the product from these materials." The action of the mixer in breaking up the particles of rubber clearly indicates that it works rubber. In any event, it cannot be denied that making compounded rubber is manufacture. It is separately classifiable from rubber in the Central Excise and Customs tariff and hence liable to duty.

7. The departmental representative's contention that it is only machinery that which is used in one industry either rubber or plastic that would fall for

classification in 8477 also does not appeal to us.

The word "rubber or plastic" cannot be so construed as to mean that the machine should be used in one of the two industries. The Explanatory Notes below heading 8479.82 explains that the heading includes pressers etc. designed for "particular goods or industries". While too much should not be read into this, the use of the words "industries" rather than "industry" cannot be ignored. Overall, heading 84.77 appears to us to be more appropriate.

8. The appeal is accordingly allowed and the impugned order set aside.

Consequential relief if permitted by law.