

Project and Development India Vs. Collector of Customs

Project and Development India Vs. Collector of Customs

SooperKanoon Citation : sooperkanoon.com/3451

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-12-1987

Reported in : (1989)(42)ELT98TriDel

Appellant : Project and Development India

Respondent : Collector of Customs

Judgement :

1. The question before us in this appeal, originally filed as a Revision Application and transferred to the Tribunal to be treated as an appeal, is the classification of "Tablet pressing machines" imported by the Appellants under Bill of Entry No. DI97 of 2/3-9-1980.

2. On importation of the machine was classified under Heading 84.59(1).

After clearing the goods the Appellants claimed re-classification of the goods under Heading 84.59(2) on the ground that the machine is designed for the production of a commodity. This claim was rejected by the Assistant Collector and the Appellate Collector who held that the machine is used for making tablets which is not production of a commodity and therefore, cannot be considered to produce anything.

3. Shri D.L. Basu Roy, Ld. Consultant for the Appellants submitted that the machine is a sophisticated unit and produces a catalyst which is used in the production of fertilizers. He explained that in the catalyst plant a number of

machines are used in a series and the imported machine is one of them, used in the final stage. He further submitted that a similar machine imported earlier under Bill of Entry 379 dated 9-4-1980 was classified under Sub-heading (2) of Heading 84.59. He emphasised that the imported machine does produce a commodity, namely, a catalyst. In support of his arguments the Ld.

Consultant relied upon a judgment of the Tribunal in Collector of Customs, Bombay v. Dura Foam Industries (P) Ltd. reported in 1986 (26) ELT 341.

4. Shri D.K. Saha, Ld. JDR, opposed the arguments and submitted that making pallets of a catalyst cannot be said to be production of a commodity which would qualify the imported machine to be classified under sub-heading (2) of Heading 84.59. He relied upon the order of Tribunal in the matter of Arohan Mukhyalaya, Bombay v. Collector of Customs, Bombay 5. We have considered the arguments of both sides and have perused both the judgments cited by either side. We have also perused extracts of the operating instructions filed by the Appellants and also diagrams of various parts of the imported machine. The imported machine cost around 8 lakhs of Rupees and it has been explained that its function is not merely to make pallets but much more. This does seem to be so as is evident from the various documents filed by the Appellants. We have also perused the copy of the purchase order filed by the Appellants. It is seen that as explained by the Appellants the machine is used for production of catalyst pallets out of the catalyst mass for which the machine is stated to be a vital equipment. It was further submitted by the Ld. Consultant that the Catalyst manufactured by the Appellants will be of no use unless it is palleted to required strength and dimensions for which purpose the imported machine is used.

6. We note the opposition of the Ld. JDR to the view that there is actually production of the pallets by the imported machine. We have perused our earlier judgment in Arohan Mukhyalaya, Bombay v. Collector of Customs. Therein we were considering a machine which was used for twisting of a wire, which was held not to amount to production of a commodity. On the other hand in Collector of Customs, Bombay v. Dura Foam Industries (P) Ltd. , (supra) the Tribunal held that cutting of foam blocks by foam cutting machine leads to the production of different

products which are marketable. In the present case the mass of catalyst was stated to be useless before palletisation. Therefore, it has to be held that the machine is used in the manufacture of catalyst pallets. There is a change in the input which comes out as output. We further note that the appellants manufacture the mass as well as the pallets. In the light of our earlier judgment in Dura Foam 1986 (26) ELT 341 and on the facts of this matter, we hold that the imported machine is used for the production of a commodity, namely, catalyst pallets. In these circumstances we held that the imported machine should be correctly classified under Heading 84.59(2) CTA.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com