

Commissioner of Customs and Vs. Remi Process Plant and Machinery

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-30-2004

Reported in : (2004)(170)ELT348Tri(Mum.)bai

Judge : A Wadhwa, A T Moheeb

Appellant : Commissioner of Customs and

Respondent : Remi Process Plant and Machinery

Judgement :

1. The main appeal is filed by Revenue against the order of the Commissioner (Appeals).

The Revenue pleads that the said goods are classifiable under Chapter Sub-heading 8431.00 of CETA which reads thus: Paris suitable for use solely for use or principally with the machinery of heading 84.25 to 84.30'.

3. The Commissioner held them to be classifiable under 8428.00 which reads thus "Other lifting, handling, loading or unloading machinery (For example, lifts, escalators, conveyors, teleferics)". Hence the dispute.

4. The Commissioner in the impugned order held that the goods are classifiable under 8428.00 for the following reasons.

- Chartered Engineer Certificate that the said goods are machines on their own, each having a prime mover of its own.

- Note 5 of Section XVI of CETA 1985 indicates that for the purpose of these notes, the expression machine means machine, machinery, plant equipment, apparatus or appliance cited in the headings of Chapter 84 or 85". The said goods are machines within the meaning of Note 5 and should therefore been classified under the appropriate heading meant for machines (8428) and cannot be classified as parts.

- Subject goods therefore are correctly classifiable under 8428 and not under 8431.00 as parts of machinery.

5. The revenue contends that the Commissioner erred in classifying the goods under Chapter Heading 8428.00. The purchase order shows that the goods are merely parts of system. The purchase order describes that the goods are mechanism or a pad and in some cases without piping, pneumatic and electrical system etc. which indicates the goods are only Tarts' classifiable under 84.31.

6. The Ld. SDR strongly supported the Revenue's contention. The respondent is represented by Ld. Advocate R.J. Parekh.

8. In the impugned order the Commissioner says that he has perused the drawings, purchase orders, invoices of the disputed product along with the Chartered Engineers Certificate before coming to the conclusion that the goods consist of individual machines. Revenue has not filed any purchase order before us except making a bland statement that the purchase order describes the goods in a particular manner. The chartered engineer certificates stale that each of these machines has a pneumatic cylinder which acts as a prime mover. The Commissioner referred to Section Note 5 of Section XVI and held that the said goods qualified to be called machines and have to be therefore classified under the heading meant for such machinery. The revenue does not even refer to this observation of the Commissioner except referring to the purchase order. The Chartered Engineer's Certificates clearly brings out as to the structure of each of the machines, the parts it consists and the use it is put to. The Revenue does not even refer to the certificates though they are aware that the Commissioner relied on the certificate while concluding that the subject goods are machines. The Ld. Advocate for the respondents relied on the decision of Karnataka High Court [1986

(25) ELT 660] where a Division Bench of the Court held that classification of goods involving technical questions are not decidable without technical opinion. In the present case the subject goods are machines in the opinion of the expert.

9. The Assistant Commissioner argues that the goods are lifting and handling machinery but still classifies them as parts of machinery of heading 84.28 on the plea that they are parts of handling systems. Even if one concedes that the goods in question are not complete handling system (obviously they are not), the fact remains they are equipment, appliance, machine etc. which cannot be called parts as per Section Note 5 of Section XVI. The goods in question fall under the category of machines which are distinct from parts. The Commissioner is right in holding the subject goods as ones that fall under chapter heading 8428.

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