

Lallubhai Amichand Ltd. Vs. Commr of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-31-2004

Judge : K Kumar, A M Moheb

Appellant : Lallubhai Amichand Ltd.

Respondent : Commr of Central Excise

Judgement :

1. These are the cross appeals. Shri V M Doiphode, Id. Advocate appeared for the appellant. Shri Ajay Saxena, Id. SDR appeared for the revenue.

2. At the outset the Id. SDR submitted that in the appeal filed by the revenue, a prayer has been made to remand the appeal to the Commissioner (A) to decide on merits. In the appeal of the revenue following grounds have been taken:- 1) The Commissioner (Appeals) has erred in holding that the appeal before him involved from classification of goods like lotion bown, bed pan, sieves, chassis, Tubes, suitcase and school bags of aluminum. The issue before the Commissioner (Appeals) involved only classification of the product viz. Rice boiler, Milk Cooker, Idli Patra, Idlistand, separator and Trays and the availability of Exemption Notification No. 180/88-CE dt. 13/5/1988, as such his findings regarding the classification of lotion bown, Bed pan, Sieves, Chassis, Tubes, Suitcase and School Bags of aluminum Idli Cooker exceed the scope of appeal before him. Similarly the Commissioner (Appeals)'s orders regarding the classification of surgical tray, bed pan, kitchen try, lotion bown, pressure pan, sieves and chassis are not areas of dispute involved in the show cause notice and therefore exceed

the scope of appeal before him.

2) The Commissioner (Appeals) averments regarding the hospital utensils being of stainless steel is not of any relevance to the present case. Further, the holding that surgical Tray, Bed pan, Kitchen Tray, Lotion Bown are all hospital wares classifiable under Chapter Sub-Heading No. 7326 is not acceptable, since the trays made by the assessee are made of aluminium and cannot be classified under chapter 73. As such kitchen Tray, made of aluminium would find classification only under Chapter Sub-Heading 7615.10 of the Central Excise Tariff Act, 1985. 3) The findings of Commissioner (Appeals) that Rice Boilers, Milk Cookers, Idli Stand etc do not work on the principle of pressure but on the principle of steam is not acceptable. The conclusion drawn that Rice Boilers, Milk Cooker, Idli Stand, Idli Patra, Idli Cooker cannot be treated as parts of pressure cooker and would rightly be classifiable under Chapter Sub-Heading No. 7615.10 and entitled to the benefit of Notn. No. 180/88 dt. 13/5/88 is also not acceptable.

As per the Oxford dictionary, the word "pressure cooker" means an airtight pot in which food can be cooked quickly under steam pressure. In the case of rice Boiler, Milk Cooker as well as Idli Cooker the edible items are placed in airtight, containers and cooked under steam pressure. The basic principle involved is the retention of the steam pressure created on heating to quicken the process of cooking. Therefore the findings of the Deputy Commissioner, Central Excise, Chembur Division, in his order dated 31/1/2002 that Rice Boilers, Milk Cookers, Idli Patra, Idli stand, separators are parts of pressure cookers is proper and also their classification under Chapter Sub-heading No. 7615.10 of Central Excise Tariff Act, 1985 and therefore, holding that these items are not entitled for the benefit of notification No. 180/88-CE dtd.

13/5/1988 is in order and requires to be upheld." 3. In the appeal filed by Lallubhai Amichand Ltd the following grounds have been taken:- a) The appellants say and submit that the impugned order in appeal passed by the Commissioner of Central Cex (Appeals) is illegal and bad in law and cannot be sustained since there is total non-application of mind. Further the impugned order passed by the Commissioner of Central Excise (Appeals) is passed in gross violation of the principles of natural

justice in as much as no effective personal hearing was given to the appellants before deciding the appeal.

b) the appellants further say and submit that the total non-application of the mind by the Ld. Commissioner (Appeals) while passing impugned order is evident from the facts that the finding purported to have recorded by the Ld. Commissioner (Appeals) is a word to word reproduction of the grounds of appeal filed by the Asst. Commissioner. The total non-application of mind is so evident from the fact that the typographical error and the grammatical inaccuracies in the grounds of appeal is repeated into the purported findings recorded by the Ld. Commissioner.

c) The appellants say and submit that the learned Commissioner (Appeals) while allowing the appeal filed by the Department and ordering the reclassification of goods involved in the present appeal has not discussed any reason or even bothered to substantiate his findings with any cogent reason or citing any authority but merely reproduced the grounds in the appeal filed by the Department as his findings in the impugned order.

d) The appellants submit that the Ld. Commissioner erred in holding that Rice Boiler, Milk Cooker, Idli Stand, Idli Patra and Idli Cooker etc. are not entitled In the benefit of Notification 180/88-CE. The appellants submit that the aforesaid 5 items can no way be considered parts of pressure cooker in as much as in Rice Boilers, Milk Cooker and Idli Cooker's, the process of cooking is without exertion of any pressure whereas in pressure cooker, cooking is done under pressure. The appellants therefore submit that the aforesaid 3 items works under separate principles than that of the cooking done in pressure cooker. As far as Idli Stand, Idli Patra are concerned by any stretch of imagination it can be regarded as parts of pressure cooker. The product literature of these two products further support the submission of the appellants.

e) The appellants say and submit that Ld. Commissioner erred in ordering the classification of the items of Kidney Tray, Surgical Tray, Bed Pan and Lotion Bowl as Hospital wares falling under Chapter Sub Heading 7326 without the benefit of exemption under Notification 41/91-CE. The appellants submit that the total non-application of mind by the Ld. Commissioner is glaringly evident in as much as in

the grounds of appeal, the Asst. Commissioner sought classification of these four products under Chapter Heading 7623/50 and the Ld. Commissioner ordered classification as prayed for in the said grounds of the appeal by the Asst. Commissioner whereas there is no Chapter Sub Heading 7326 anywhere in the Central Excise Tariff Act, as 7326.

f) The appellants submit that under Chapter Heading 7326, other articles of iron and steel which are either forged or stamped but not further worked or articles of iron or steel wire are covered.

The four items in question are neither forged or stamped articles nor articles of iron or steel wire, and therefore, the classification of these products under Chapter Heading 7326.00 requires to be ruled out.

g) The appellants submit that the correct classification of the aforesaid 4 items, namely; Kidney tray, Surgical Tray, Bed Pan and Lotion Bowl is under Chapter Heading 73.23 as Table, Kitchen or other house-hold articles and part thereof. The appellants submit that the Chapter Heading description in the Central Excise Tariff Act for Chapter Heading 73.23 and the description thereof in the Harmonious System of Nomenclature is exactly identical and for this reason the explanatory note under the said Harmonious System of Nomenclature should be taken as a guiding factor for classification of these products in question. There is no dispute about the fact that all the four products retain the character of Iron or Steel Articles. The relevant explanatory note under Chapter Heading 73.23 appears in Page 1035 of the Sub Heading No. reproduced below: "This group comprises a wide range of iron or steel articles, not more specifically covered by other headings of the Nomenclature, used for table, kitchen or other household purposes; it includes the same goods for use in hotels, restaurants, boarding-houses, hospitals, canteens, barracks, etc." h) From above explanatory note, it is very clear that the above Chapter Heading 73.23 covers articles used in Hotels, Restaurants and Hospitals etc. and therefore, these four articles of Stainless Steel are squarely covered under Chapter Heading 7323.00 during the relevant time and presently under Chapter Sub heading No. 7323.90.

i) The appellants submit that Sieves, Charnis, Trays and Tubs are correctly classifiable under Chapter Sub-heading 7615.10 and entitled to exemption under Notification No. 180/88-CE. Since the Sieves and Charnies in question are not industrial items, classification under Chapter Sub-heading 9604.00 is not appropriate.

Besides the reliance of the Ld. Commissioner (Appeals) on Board Circular No. 37/90-CE was not warranted.

Being a quasi judicial authority, the Ld. Commissioner (Appeals) should have decided that correct classification on merits independent of the circular issued by the Board which is not binding on quasi judicial authorities. The appellants submit that in any case, the instruction contained in the said circular is not applicable to the facts and circumstances of the present case.

j) As regards the classification of School bags and suit cases under Chapter Subheading 7616.90 ordered by the Ld. Commissioner (Appeals), the appellants submit that correct classification thereof is under Chapter Sub-heading 7615.10 being house-hold items and therefore, classification of these school bags and suitcases as 'other articles of Aluminium' is not correct.

4. Both the sides agreed that the matter needs to be remanded to the Commissioner (Appeals) to decide on merits after taking into accounts the above grounds and pass a fresh speaking order in the matter after recording his findings on all the points to be raised before him.

5. We, accordingly, remand both the appeals to the Commissioner (Appeals) for fresh adjudication and to pass a fresh speaking order after affording a reasonable opportunity of being heard to the Lallubhai Amichand Ltd.

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