Commissioner of Customs Vs. Reckit and Colman of India Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-07-2005

Reported in : (2005)(190)ELT221Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of Customs

Respondent : Reckit and Colman of India Ltd.

Judgement :

1.1 M/s Reckit & Colman of India Ltd imported a consignment of 'MOUNTS & HEADS FOR TOILET SPRAYS' and filed a BE on 26.5.97 and claimed the clearance under special Import Licence (SIL for short). The lower authority rejected the clearance on the SIL as the goods were found to be covered under heading HS ITC code 961610.00 and not under 842490.00 is claimed as mechanical appliances.

1.2 the goods are claimed by the importer to be not part of scent sprays to qualify for classification under 9616.10. The CC(A) in appeal found that- I have heard the Advocate, Shri T Vishwanathan, on 31.5.1999, Referring to the dictionary meaning of spray, which clarifies the spray as referring to water or other liquid flying in small drops from the force of the wind or waves, the action of an atomizer etc it was contended that, the goods imported are used in the mechanical appliances not for spraying purposes but for dispersing/projecting.

Dispersing/projecting cannot be called as spray by virtue of the dictionary meaning referred to. Since the goods imported are used as a part of "Dettol Liquid Soap" having a container/reservoir of plastics with threaded body at the top to store the liquid soap and the subject parts contain basically a plunger fitted with stem to disperse the liquid from the container on gentle pressing they cannot be considered as part of scent spray so as to attract the classification under ITC HS code 9616. Referring to the Explanatory Notes to Chapter Heading 96, it was contended that the said chapter excludes to dispenser. They, therefore, qualify for classification being an article of plastic either under CTH 39 or 84. It was, therefore contended that the correct classification of the product would be under CTH 8424 and not under 9616, as held by the department. In support, the decision of the Tribunal in the case of Commissioner of 21/97 B2 dated 30.4.1997 was referred to. The dispute in the referred case was regarding the assessment of valves imported for use in the inhaler manufactured by M/s Cipla for marketing its drugs through the inhaler. While the appellants in this case claimed the classification under 8481.80 read with notification benefit under 153/86, the department insisted for classification under CTH 9619.10. The Tribunal held that the classification of the valves which are used in the inhaler which disperses the medicated drug is different from the perfume dispensing set and accordingly held its classification under CTH 8481.30 and not under CTH 9616, as contended by the department.

The impugned order and the submissions have been considered by me carefully. The dispute is regarding the classification of Handpump Disperser importer by the appellants-whether it should be classified as parts of scent spray falling under CTH 9616.10 or as parts of an appliance falling under CTH 8424.90 i.e. as parts of an appliance falling under CTH 8424.90 i.e. as parts of an appliance other than agriculture or horticulture classifiable under CTH 8424.89. As per the appellants write up the goods imported are hand operated dispenser pumps of plastic. In the write-up it has been stated that the subject article is basically incorporated with a press nozzle with trigger and upon gentle pressing the liquid from inside the container/reservoir comes out. The Dettol Liquid Soap manufactured by the appellants is contained in a plastic container in shape of a bottle better known as a reservoir or container of plastic having threaded body at the top to store the liquid soap. The imported part consisted of a plunger fitted with stem to disperse liquid for the container on gentle pressing, which otherwise are specifically designed to directly or through a conduit dipped into the container to project out the liquid. The plunger along with its stem are again threaded on to the container to constitute the complete article of plastics, which means the articles when complete can be deemed to a "Mechanical appliance for projecting or dispersing out the liquids from the container and this plunger is fitted with a trigger for controlling the flow through its nozzle and finally disperse the liquid by pumping out process. Since dispensing cannot be considered as spraying, I agree that the goods cannot be equated as parts of scent sprays qualifying for classification under CTH 9616.10.

Chapter 8424 deals with mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines. The appellants seek classification as other than scent sprays and similar sprays. I agree with the appellants that to qualify for classification under CTH 9616.10 the appliance is required to perform the spraying function and in the appellants case the part imported does not participate in the spraying function but is used for dispersing the liquid even though the principle of the mechanism adopted is somewhat similar. By exclusion on 9616 makes the said chapter as not applicable to dispersing or spraying appliances falling under heading 8424. There is no separate sub-heading for dispersing appliances under heading 8424. It is doubtful that the appliances, if imported as such viz with a container/reservoir of plastic having a threaded body which is fitted with a plunger which functions with a trigger for gentle pressing to regulate its flow through the nozzle, would qualify for classification under CTH 8424.89. The heading 8424 reads mechanical appliances whether or not hand operated for projecting, dispersing or spraying liquids or powders. Chapter 8424.20 refers to spray guns and similar appliances. CTH 8424.30 refers to Steam or sand blasting machines and similar jet projecting machines. The disputed item is neither a spray gun, similar jet projecting machine nor it can be classified under CTH 8424.89 because CTH 824.89 refers to other than agricultural or horticultural appliances, industrial bellows and similar other products having same type of functioning are covered.

It would, therefore, be correct to classify the appliances under CTH 8424.20 under the category of similar appliances like spray guns.

Infact the Explanatory Notes to Chapter 8424 refers that hand control appliances are usually designed for attaching to compressed air or steam lines, and are also connected, either directly or through a conduit, with a reservoir of the material to be projected.

They are fitted with triggers or other valves for controlling the flow through the nozzle, which is usually adjustable to give a jet or more or less divergent spray. The dispersing and spraying fall in the same category as the heading reads viz for projecting dispersing spraying powder. When the whole appliance comes it would be classifiable under CTH 8424.20 and not under CTH 8424.89 as contented by the appellants. As per the ITC HSN Classification Code the spray guns and other items are treated as consumer goods, However, when they are parts they are in classificable under CTH 8424.90, and as per the relevant policy such import allowed free, irrespective of the fact whether they are used in the appliances falling under CTH 8424.20 or 8424.89. Accordingly the said parts are freely importable of view, the appellants having a case in their favour.

& ruled out the classification out of 9616.10 and classified them under 8424.90.

i) Commissioner (Appeals) holds that the goods do not participate in the spraying function but are used for dispersing liquids and even though the principle of the mechanism adopted is somewhat similar.

ii) The use of 'Mounts & Heads' is for soap dispenser and similar toilet sprays and are not the type listed under 84.24.

iii) The importers are in the business of manufacture of toiletries and the goods under 84.24 ae special industrial uses.

2.1 Matter was heard. Respondent importers were not in attendance.

Sample produced was inspected. It is fund that the nature of Article as it appears from the inspection, has been brought out by the CC(A) in his order, as extracted herein above. The use is for spray/dispersal of Toilet requires (e.g. liquid soap) i.e. consumer goods and cannot be for industrial purposes. The use for Toiletries and Soap liquids is uncontested.

2.2 The term 'Spray Guns and Similar Appliance' under heading 84.24 of HSN reads as "Spray guns and similar hand controlled appliances are usually designed for attaching to compressed Air or steam Lines and are also connected, either directly or through a conduct, with a reservoir of the material to be projected. They are fitted with Triggers or other values for controlling the flow through the nozzle., which is usually adjustable to give a jet or move or less divergent spray.

They are used for spraying paint or distemper varnishes, oils, plastic, cement metallic powders textile dust etc. They may be used for projecting a powerful jet of compressed air or steam for cleaning stone work in building statutory etc." (1) Scent, brilliantine and similar toilet sprays, whether of the table of pocket type, whether for personal or professional use. They consist of a reservoir, generally in the form of a bottle (of glass, plastic metal or other material), to which is fixed the mount, this mount in corporate the head (with its spray forming mechanism) & a premature pressure bulbs (sometimes enclosed in a textile net) or a piston drive.

From a reading of these two notes it is apparent that what are envisaged under 84.24 are entities working on high pressure air / steam sources while the motivating force under 96.16 has to come from bulb pressure or piston action, the former being required for industrial use while the later are for consumer purposes. Moreover the import herein are only of the "Mount and Head" and not the reservoir/bulb etc., 'Mounts for toilet spray' & Head pieces for toilet sprays are more specifically covered under 9616 at Sr No.2 & 3 of the notes. The use of the mounts to dispense and thus spray liquid Soap is not in doubt. We therefore cannot share the classification of 'Mounts and Heads' for toilet sprays/dispensers to be under 84.24 the view of CC(A). We would uphold the lower authorities classification under 9616 with the consequence as arrived.

3.1 In view of the findings, the appeal of Revenue is allowed by setting aside the order of CC (A) and restoring and confirming the order of the original authority.