Commissioner of Central Excise Vs. Amee Products

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SooperKanoon Citation : sooperkanoon.com/39157

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-24-2005

Reported in : (2005)(187)ELT454Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : Amee Products

Judgement :

1. The issue in all these appeals filed by Revenue is challenge to the classification and consequent duty demands and penalty consequences on allegation of clandestine unaccounted removal and invoking the proviso to Section 11A(1) for the larger period of duty demands. They are being disposed by this common order.Sl. No. Product Classification by Claim by Assessee Department(a) Lemon squeezer 3924.9 8201(b) Handy juicer 3924.9 8479.9(c) (i) Two way Chapper 3924.9 8214 (ii) Three way scrapper 3924.9 8214 (iii) Three in one 3924.9 8214 (iv) Fruit scrapper 3924.9 8214(d) Vacuum juicer 3924.9 8479.9 Since, on the two items i.e. kitchen express & Beater cum the ld.Advocate for the respondents had no contest to the department proposal to classify the same under 8210.00. Our findings are restricted to the item 'a' to 'd' above.

1.3 On considering the section and lead notes to the HSN and CETA 1985, for the competing entries and considering the functions of the disputed items, it is found - (a) Lemon squeezer and Handy juicer are made up entirely of plastic material with a pivot of metal screw/nail on which the two arms move, one arm having a recessed and the other arm a convex end. In the cup like recess lemon of citrus fruit like orange/sweet lime cut into half is placed, the convex arm is then placed on top and by exerting a grip pressure on both these arm the juice from the cut pieces of fruit is squeezed out, it strains through the cup recess arm in to the desired container, the grip is released the arms lifted and the squeezed fruit rind removed. This would be a table or kitchen-ware of plastic & will merit to qualify under 3924.90 as claimed. Since we cannot find any mechanical device or shown any such device in the grounds taken, which would call for transferring the entity out of Chapter 39 to Chapter 8214.00. Classification under Heading 3924.90 is upheld.1.4 As regards the various scrappers, at c(i) to c(iv), on inspection of the catalogue & the products they are found to be having a metal blade and a complete plastic body with hard indenture & holes etc. on usable surface, to give shape to vegetable/potato etc. being sliced & shaped into chips etc. or the rind being removed. The note to Chapter 82 & that the blade being not the only functional part, in the scrappers, induce us to classify these gadgets, as kitchenware of plastic, under having 3924.90, to which it is more akin then the products of Heading 8214.10 since there is no other mechanical function shown to us.

1.5 The vacuum juicer, as at d above, on inspection & from the catalogue shown admittedly has a hand churning/rotating device which is mechanical in operation; which would bring this product within the parameters of Heading 8214. The classification under 8214.00 is appropriate for this item.

2.1 Once classification of the disputed entity is held & determined, the other issue of quantification of demands & presence of ingredients to invoke the process of Section 11A(1) have to be redetermined after considering the fact of the declarations having been made & on records.

3.1 The appeals are therefore allowed as Removal to the Original authority to redetermine the demand, if any, that could be made in view of the classification arrived & not pressed herein above & keeping the issue of proviso clause invocation open, to both sides. Thereafter penalty if any in this case could be determined.