Hmt Ltd. Vs. Commissioner of C. Ex. and Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-21-2005

Judge : J Balasundaram, Vice-, A M Moheb

Appellant : Hmt Ltd.

Respondent : Commissioner of C. Ex. and Cus.

Judgement :

1. The above appeal arising out of the order of Commissioner (Appeals), Central Excise & Customs, Pune, who confirmed the duty demand of Rs. 14,37,805/- on certain machinery items, but set aside the penalty of Rs. 25,000/- imposed upon the appellants by the adjudicating authority.

2. The demand has been confirmed as a result of holding that the disputed items did not fall for classification under Chapter Heading 84.34 to the Schedule to the CETA, 1985 attracting Nil rate of duty, but fall under other Chapter Heading 84.

3. The assessee claimed classification of item Nos. 1 to 7 above under Chapter Heading 84.34 and for serial No. 8 classification under Chapter Heading 8434.90. The authorities below have applied Note No. 2 of Chapter Heading 84 and HSN explanatory note excluding such items, which are in the nature of pasteuriser/chiller etc. from the coverage under Chapter Heading 84.34. Note No. 2 to Chapter Heading 84 clearly sets out, that subject to the operation of Note 3 to Section XVI, a machine or appliance which answers to a description in one or more of the Heading Nos. 84.01 to 84.24 and at the same time to a description in

one or other of the Heading Nos. 84.25 to 84.80 is to be classified under the appropriate heading of the former group and not the latter group. Certain items are extended from the above, but it is not the case of the appellants nor it can be the case that all the 8 items in dispute are excluded in Note No. 2 to Chapter 84. The adjudicating authority has found that the items at serial Nos. 1 to 4 above are heat exchangers and therefore classifiable under CETA sub-heading 8419.10, which covers machinery ... whether or not electrically heated for the treatment of materials by a process involving a change in temperature such as heating.... Pasteurizing... or cooling...," .He has held that parts of the above machinery will fall under CETA Chapter Heading 8419.90, which covers parts of machinery falling under Chapter Heading 84.19 and that they are chargeable to duty at the rate of 13%, which prevailed at the relevant time. As regards item at serial No. 5, he has classified it under Chapter Heading 8413.99 as pumps for liquid and parts thereof and therefore falling under Chapter sub-heading 8413.19 and attracting duty at the rate of 13%. As regards, item at serial No.6 above, he has held that they are classifiable under Chapter sub-heading 8421.10, as centrifuges and parts classifiable under Chapter sub-heading 8421.90 attracting duty at the rate of 13% ad valorem. As regards item at serial No. 7 above, he has confirmed the classification under Chapter sub-heading 8422.80, as wrapping machinery, attracting duty at the rate of 13% ad valorem and also classified the parts under Chapter sub-heading 8424.90.

4. We also find that as per HSN explanatory note to Chapter Heading 84.34, that machines for processing milk depend on the principle of heat exchange and they are excluded from coverage under Chapter Heading 84.34 and the heading also excludes refrigerating appliance (whether or not specially designed for cooling or keeping milk and milk cooling vats incorporating evaporator of a refrigerating unit) from Chapter Heading 84.34. HSN Explanatory note 1 Paragraph Number as per certified copy also excludes machines for wrapping or weighing a product from Chapter Heading 84.34.

5. Further in the case of Diary Development Corporation v. Collector of Customs, Bombay , the Tribunal held that butter packing machine is classifiable under Heading 84.22 of the Customs Tariff Act, 1975 and not under Heading 84.34.

6. In the light of the Note No. 2 to Chapter Heading 84.34 and HSN explanatory notes to Chapter 84.34 and the Tribunal's decision cited supra, we reject the contentions of the appellants that pasteurizing machines in question are dairy machines for classification under Chapter Heading 84.34 (although they are dairy machines) and uphold the findings of the authorities below, as regards classification under different headings of Chapter 84. In the result, we uphold the impugned order and reject the appeal.