

**Commr. of Cus. (i) Vs. La-cast Metals and Components**

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**SooperKanoon Citation :** [sooperkanoon.com/41178](http://sooperkanoon.com/41178)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Dec-16-2005

**Judge :** J Balasundaram, Vice-, S T S.S.

**Appellant :** Commr. of Cus. (i)

**Respondent :** La-cast Metals and Components

**Judgement :**

1. The Revenue is aggrieved by the order of the Commissioner (Appeals), who has extended the benefit of Notification No. 23/98-Cus dated 2-6-98 in terms of Serial No. 152 of the table to the Notification to Piston Ring Set imported by the respondents herein for use as components/parts of engines of Shakti Power Tillers.

2. We have heard both sides. Serial No. 152 of the table to the Notification No. 23/98 grants benefit of concessional rate of duty at the rate of 20% to the goods falling under Customs Tariff sub-heading No. 8409.91 or 8409.99 other than if they are parts of goods falling under sub-heading No. 8407.31, 8407.32 8407.33, 8407.34 or 8408.20. The imported items are classified under Chapter Heading 8409.00; therefore, they are falling within one of the headings specified at serial No.152. Therefore, what is to be seen is whether the imported goods are parts of goods falling under exclusions mentioned above in serial No.152. It is the case of the Department that the imported Piston ring sets are used in diesel engines, which are of a kind used for the propulsion of vehicles falling under chapter heading 87. In other words, it is the case of the Department that diesel engines in

which imported parts are used for propulsion of vehicle falling under Chapter heading 84 namely, power tillers falling under Chapter heading 87.

However, we find that it is very clear that the Tiller manufacturer has classified tillers under Chapter heading 84.32 and therefore, until that classification is altered is not permissible for the Customs authorities to change the classification of Tillers from Chapter heading 84.32 to Chapter 87 so as to hold that the imported items are parts of engines used for propulsion of vehicle falling under Chapter heading 87. Yet another reason, why the goods in question cannot be considered as falling under excluded category of Serial No. 152 is that tillers in which engines, which of imported items the parts are hand tillers and therefore engines thereof cannot be said to be used for propulsion of vehicles. Although HSN explanatory notes to Chapter 87 which covers tractors, covers pedestrian controlled tractors also, there is nothing in HSN explanatory notes placed before us by the Id.SDR to show that such tractors are having engines, which are used for propulsion of tractors.

3. For the above reasons, we hold that there is no infirmity in the impugned order of the Commissioner and accordingly, we uphold the same and reject the appeal.

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