# Collector of Customs Vs. Purity Flex Pack Ltd.

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**SooperKanoon Citation** : sooperkanoon.com/7077

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

**Decided On :** Oct-12-1993

**Reported in** : (1994)LC85Tri(Delhi)

**Appellant** : Collector of Customs

**Respondent** : Purity Flex Pack Ltd.

**Judgement** :
M/s. Purity Flex Pvt. Ltd., Ready Money Terrace, Worli Naka, Dr.

A.B. Road, Bombay filed B/E No. F-001398 dated 13-3-1990 for clearance of one extrusion lamination plant and accessories imported by them from Korea. They claimed the classification under Heading 8477.20.

A query was raised by the department so as to know how they had claimed the classification of the machines under Heading 8477.20. They were also asked to explain as to why the machines should not be classified under Heading 8479.89.

In reply to query raised by the Deptt. the importer vide their letter dated 4-5-1990 stated that the machine fell under Heading 8477.20. They were also asked to explain as to why the machines should not be classified under Heading 8479.89. In reply to the query the importer replied that the machine fell under 8477.20 and not under 8479.89 as the machine is a coater/extruder. They gave the detailed process description to justify their claim. They further added that since the machine is basically used for the purpose of coating and extruding and since lamination cannot be achieved without coating and extrusion the plant has to be classified under Heading No. 8477.20 and not under 8479.89. He enclosed the copy of machine specifications received from the manufacturer. The importer vide his letter dated 9-5-1990 again insisted for classification under Heading No. 8477.20 as machinery for working rubber or plastics or for the manufacture of products from these materials as these are not specified or included elsewhere in the chapter. They also enclosed definition of Aseptic Packaging and other data.

Again vide their letter dated 17-5-1990 they emphasised that machine which they had imported is essentially for manufacture of Aseptic Packaging materials for food industries. The process involved is of coating and extrusion. It was stated that under Notification 250/88-Cus., dated 16-9-1988 multilayer Coater/Extruder Machine is also to be covered under Notification No. 355/85, dated 6-12-1985. Further vide their letter dated 31-5-1990 the importer informed that the machine manufactured by the same supplier was cleared by Bombay Customs House under Heading No. 8422.40 at a concessional rate of duty @ 35% + 5% and under OGL vide Appendix No. 1 Part B, Section No. 17(i) as an Aseptic Packaging Machine. The B/E cleared by Bombay Customs House as informed by him was 8501 /21-2-1990.

"I have gone through the facts of the case and submissions made by the importer, Custom Tariff Heading 8477.20 under which the classification is claimed by the importer reads as 'Extruder'. But Catalogue of the manufacturer describes the goods as 'model KEL1200' as Extrusion Laminator Coating Machine. Also from the write-up it has been observed that in the inter-mediatory stage of the manufacturing process (after web passes through the anchor ceater unit and drying unit) molten LDPE or other laminate is extruded on the web in the form of sheet from the T. Die of the extruder unit.

Therefore the extrusion is only an ancillary function in this lamination machine. The essential character of the machine is lamination and not that of extruder. Therefore party's claim for classification under Chapter 8477.20 is not tenable. Therefore the machine would fall under Heading 8479.89 of CTA, 1975.

The party's claim for exemption under Notification No. 125/86-Cus.

which was wrongly being mentioned as Notification 355/85 is also not admissible because, inter alia, the lamination machine is not mentioned in Column (2) of the Table of the Notification 125/86 at Sr. No. 23 covers Asceptic Packaging Machinery only. As evident from the importer's explanation and Manufacturer's Catalogue the Machine imported does not perform any of the function of Asceptic packaging.

In fact the machine only produces material for Asceptic packaging viz. Plastic laminated films. Therefore, the machine does not qualify for concessional rate of duty under Notification 125/86.

Importer also did not insist for the benefit of duty under Notification 125/86 as is evident from the fact that they subsequently requested for assessment under Notification 250/88 as 'Multilayer Coater/Extruder Machine'. I, therefore, do not allow the benefit of Notification 125/86, dated 17-2-1986.

Regarding importer's claim for the benefit of Notification 250/88-Cus. at Sr. No. 2 it is found that notification allows benefit to Multilayer Coater/Extruder Machine meaning thereby the machine should be either Multilayer Coater or Multilayer Extruder.

In the preceding paragraph it has already been ruled out that it is an extruder machine. Therefore what is to be seen is if it could be a multilayer Coating Machine.

After going through its manufacturing process it is found that at one end there is unwinder from where one web is unwinded and then coated with adhesive in the process. The importer states it to be premier coating process. This film then passes through the drying unit and then goes to the Laminating unit. Molten LDPE here is extruded and laminated on the web in the form of a thin sheet from the T-Die of the extruder unit. The temperature of the laminator is over 300C. There is another unwinder after this stage where one more web remains coated ab initio (contrary to the earlier unwinded where web gets coated in the process) and it is mounted on the laminating unit.

The material extruded out of the extruding unit works as an adhesive agent. The thin molten film works as an adhesive agent and is sandwiched between the two films fed from the unwinder at the end and the other fed by the unwinder located at the lamination unit.

This process is known as lamination process instead of coating process. The coating process at Coater Drayer and the thin plastic film extruded and laminated from the extrusion unit works as adhesive agent for the purpose of laminating the 2 films as discussed above. The machine does not have any multilayer coating system as one coating made at coater drayer does not form layer in the end-product.

The so formed 3 layer structure is passed through the chilled roller where the entire web is cooled. This gives a good bond to the laminated film. Thus the film so laminated is ready for rewinding on the rewinder unit. To make it more precise the coating machine is a machine which deposits a layer and distributes the coating evenly and substrata is then dried and calendered. The laminated plastics on the other hand are superimposed layers of synthetic resin impregnate or coated filler which have been bonded together usually by means of heat and pressure to form a single piece. In the present case the entire process carried on by the machine is to laminate two films fed by unwinder.

Going through the Manufacturer's Catalogue, it is seen that the machine model KEL 1200 imported by the importer has been described as extrusion laminator coating machines or manufacturer of Asceptic Packaging Films. Thus it is evident that the machine imported by the importer does not perform only a coating job but it also does the function of lamination. The coating process involved in the manufacture of laminated plastic film is an ancillary process where the end-product of the machine is a laminated plastic film. This is further substantiated in the manufacturer's Catalogue produced by the importer where the Coating Machines have been described separately as multi-purposes coater model KGCD1200 and a purely laminator are shown as dry laminator model KDRG 1200 dry and wet laminator model KDWL 1200. The catalogue describes the machine imported by the importer as Extrusion Laminator Coating Machine KCL 1200. The machine imported therefore is a combination of extrusion lamination and coating".

The Notification 250 of 1988 dated 16-9-1988 at Sr. No. 2 covers multilayer Coater/Extruder Machine. To qualify for the benefit of the notification, the machine should either be multilayer Coater or Extruder Machine. The machine imported is a combination of extrusion lamination and coating. Since the Notification 250 of 1988 does not cover the combination of extrusion lamination and coating machines therefore the machine imported by the importer does not qualify for the assessment under Notification 250 dated 16-9-1988.

The importer vide letter dated 31-5-1990 stated that similar machine from the same manufacturer was cleared by Bombay Customs vide B/E No. 8501 dated 21-2-1990 under concessional rate of duty under OGL in the Customs Heading 84.22.40 as Asceptic Packaging Machine. The matter was clarified by Bombay Customs House vide letter No. S/26-594/90-V(A) dated 20-7-1990 that the B/E No. 8501 dated 21-2-1990 of M/s. Lars Extrusion Ltd., was adjudicated vide order No. S/10/75/90V(a) dated 1-5-1990 and the. benefit of Notification 125 of 86 was denied and assessment was made under Heading 8479.89 at rate of 70% + 45% + 15%. Regarding ITC the goods were released by Bombay Custom House on redemption fine. Therefore the importer has tried to mislead the deptt. so as to claim the benefit of Notification wrongly which is otherwise not admissible for the machine imported by them." 3. The learned appellate authority has set aside the order-in-original accepting the contention of the importer that the machinery imported is essentially an extruder and not a laminator as held by the Adjudicating Authority.

4. We have heard both sides, who have reiterated the arguments before the lower authority.

5. The question to be considered is whether the "extrusion lamination" and accessories, imported by the respondent are classifiable under Heading 8477.20 as claimed by the importer, or under Heading 8479.89 as held by the learned Adjudicating Authority, and further whether the benefit under Notification No. 250/88-Cus. as a Multi-layer cooler/extruder machine is admissible to the same. Alternatively whether the benefit under Notification No. 125/86-Cus., dated 17-2-

1986/355/85-Cus., dated 6-12-1985 as Aseptic Packaging Material is admissible to them.

6. As per the Deptt. the machine is essentially a laminator and "extruder" is only a part of the same. As per the appellant the machine is essentially a multi-layer coater/extruder which is envisaged under the said Notification No. 250/88-Cus., dated 16-9-1988 and the so-called "lamination" function is not strictly a lamination function, but is covered by the term "extrusion coating".

7. In support of the said plea the appellants have quoted extensively from the book "The Wiley Encyclopedia of Packaging Technology".

As seen from the said book page 289 "Extrusion coating is a process in which an extruder forces melted thermoplastic through a horizontal slot die onto a moving web of material". The said chapter entitled "Extrusion coating" further speaks of "equipment for extrusion coating and lamination lines" and also "in extrusion laminating, 9 film of molten polymer is deposited between two moving webs in a nip created by a rubber pressure roll and a chrome-plated steel roll. In this continuous operation, rolls of material are unwound, new rolls are automatically spliced on the fly, and the surface of the substrata is prepared by chemical priming or other surface treatment to make it receptive to the extrusion coating." Thus the word "lamination" used in conjunction with "extrusion coating" is different from the conventional "lamination".

This is made all the more clear from the Chapter "Laminating Machinery" in the said book.

"Much flexible packaging laminating today includes an extrusion process, which is not covered here." (i.e. the Chapter "laminating machinery's) 8. It is well settled that in interpreting the words in a taxing statute the regard has to be had not to the technical meaning of the terms ("lamination" in the present case") but as to how it is understood by those conversant with the trade.

9. As seen from the extracts quoted above, "The lamination" in the present case is a part and parcel of "Extrusion coating". On this view of the matter, the impugned

goods are covered by the term "Multilayer coater/extruder machine" used in the Notification No. 250/88-Customs, dated 16-9-1988. (In view of this the alternative plea regarding "Aseptic packaging material" covered by Notification No. 125/86-Cus., (355/85-Cus.) does not have to be considered).

10. On this view of the matter, the question of classification of the impugned goods under sub-heading 8477.20 or 8479.89 becomes secondary, since the said notification covers "Multi-layer coater /extruder" covered by Chapter 84.

11. On this view of the matter, the order of the Appellate Authority which is well reasoned and is based on an on the spot examination of the working of the said machinery deserves to be upheld and the Department's appeal is rejected.