

Indian Sugar and General Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-19-1983

Reported in : (1984)(16)ELT387TriDel

Appellant : Indian Sugar and General

Respondent : Collector of Customs

Judgement :

1. This is a revision application which on transfer is being treated as an appeal. The appellants imported one set of a Horizontal Boring, Drilling & Milling machine model BFP 160/1 complete with essential accessories and spares for the value of Rs. 15,21,229/- CIF. The machine supplied by the supplier was cleared by the Calcutta Customs charging Customs duty at 40% on the main machine and some of the accessories and spares assessed under Heading No. 84.45/48 while higher rates of Customs duty were charged on some of the accessories and spares under various Headings of the Customs Tariff. The appellants contended that the accessories and spares should have been assessed only under Tariff Heading 84.45/48 and filed the claim for refund for Rs. 49,125.68. The Asstt. Collector of Customs, Calcutta, rejected their claim vide his order No. S 107-370/78 ARS dated 17-10-78. The appeal was preferred to the Appellate Collector of Customs, Calcutta.

The appeal was allowed partially vide order No. 1951/79 dated 28-7-79, hence the revision. The appellants contend that all the accessories and spares should have been assessed only under Tariff Heading 84.45/48.

Mr. Saini, the Import Officer of the appellants firm, urged that these accessories were compulsorily supplied alongwith machine. In any event he pointed out that 84.45/48 specifically included accessories and parts suitable for use solely or principally with the machine tools including work and tool holders, self opening dieheads, dividing heads and other appliances for machine tools, tool holders for any type of tool of machine tool for working in the hand. Mr. Nair, S.D.R, urged that the provisions of the Accessories (Conditions; Rules 1963 will not apply inasmuch as the invoice contained separate rates for these accessories and spares.

2. We have considered the contentions urged by both the parties. Rule 2 of the Accessories (Conditions) Rules 1963 envisages two conditions - (i) such accessories, parts and implements are compulsorily supplied along with that article ; and (ii) no separate charge is made for such supply, their price being included in the price of the article.

3. It is rightly urged by Mr. Nair that there is nothing on record to show that these accessories were compulsorily supplied. On the other hand, the invoice describes the item as "Special Accessories for the machine" and also "Spares". Under the former heading there are 10 items while under the latter there are 37 items. Separate prices have been mentioned in the invoice for these items. So it is obvious that the requirements of the Accessories (Conditions) Rules 1963 are not attracted.

4. However, Mr. Nair rightly pointed out that Heading 84.45/48 in itself contains concessional rates in respect of "Accessories and parts suitable for use solely or principally with the machine tools ...". The lower authority has not adverted to this aspect of the entry. The impugned order is therefore set aside and the matter is remanded back to the Collector of Customs (Appeals) Calcutta, for de-novo enquiry in respect of the Accessories and parts being used solely and principally with the machine tools and as per the observations contained in this order.