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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-18-1994

Reported in : (1995)(76)ELT355TriDel

Appellant : Continental Foundation Ltd.

Respondent : Collector of Customs

Judgement :

1. The issue for decision in this appeal is the classification of the goods imported by the appellant company described as "Aliva-Medio dry spraying machine". The appellant had claimed classification of these goods under Heading 8474.89 of Customs Tariff with the benefit of Notification No. 59/87-Cus., dated 1st March, 1987. The Assistant Collector of Customs at New Delhi did not accept the appellant's contention and held that the goods were rightly classifiable under Heading 8479.10 of the Tariff. In coming to his conclusion he considered, but did not accept the importer's alternative claim for classification under Heading 8424.89. Collector of Customs (Appeals) confirmed classification under Heading 8479.10.

2. Shri N. Singh, Consultant, appearing for the importer, explained that the classification under Heading 8474.89 was made by typographical error; the importer in fact had wished to claim classification of goods under Heading 8474.31 as concrete mixture. According to him, the technical literature in respect of the machine indicated that it performed two functions - one was mixing of concrete and other was to spray it in liquid form. He explained that machine was used at

such sites as hydro-electric projects for spraying concrete in narrow and closed spaces such as tunnels drilled into rock. If the principal function of the machine were taken to be mixing of concrete it would be classifiable under Heading 8474.31. If such function was considered to be spraying concrete, it would be classifiable under Heading 8424.89.

3. Shri K.K. Jha, SDR, argued that the machine did not mix any concrete and therefore, classification under Heading 8474.89 was ruled out. He also objected to classification under Heading 8424.89. Since the function of the machine was for spreading concrete, it would therefore appropriately classifiable under Heading 8479.10. He supported the finding of the Assistant Collector, that according to the Explanatory Notes to the HSN at page 1369 machinery for spreading mortar or concrete would be covered under Heading 8479.10. There was no difference between spreading and spraying, and classification under that heading would be most suitable.

"8474 : Machinery for sorting screening separating washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including power or paste form machinery for agglomerating. shaping or moulding solid mineral fuels powder or paste form machinery for forming foundary moulds or sand.

8424 : Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines or similar jet projecting machines.

5. The function of the machine under examination is described in the technical literature of the manufacturer produced by the appellant as follows :- "The Aliva-MEDIO type 252 is a solid built, two axle rotor spraying machine for processing dry mix via the hopper (1) the mix is fed into the rotor chambers, (2) The revolving rotor (3) conveys the mix to the air chamber, (4) The compressed air empties the rotor chamber and blows the dry mix through the conveying hose to the spraying nozzle. Water is added at the nozzle." 6. It will be seen straightaway that the machine does not in fact perform any function of mixing. The ready mixing which is

put into the hopper is blown by compressed air to the nozzle. In fact, the machine itself does not incorporate any feature for mixing the water with the dry mix. The description of the system in the write-up as well as illustration, clearly leads to the conclusion that there is no provision in it for mixing the dry mix and the water. Spraying nozzles are shown in the write-up as accessories, as is semi wet spraying equipment. The machine itself is described as "dry spraying machine".

We note, however, that the bill of entry shows that spraying attachment has also been imported. The position thus would be that without the spraying attachment the machine would spray the dry mix, with the spraying attachment it would spray the dry mix and water. Heading 84.24 of the Tariff and its sub-headings are replicas of the Heading 84.24 with its sub-headings in the Harmonized Commodity Description and Coding System, Customs Cooperation Council (CCC). It is now a settled law that in such a situation the Explanatory Notes to the Harmonized System would have persuasive value and can be referred to. These Explanatory Notes provide (see page 1188) with regard to sub-heading 8424.20 that spray guns and similar appliances are used for spraying paint or distemper, varnishes, oils, plastics, cement etc. Hence it has to be concluded that, whether the machine sprays the dry mix or mixture of the dry mix with water, it would be covered by sub-heading. The expression "liquids" used in the sub-heading obviously has to be construed to mean suspension, dispersion and emulsion. The reference to paint and distemper which are often in the nature of suspensions makes this clear. In any event, the definition of "liquid" in the McGraw Hill Dictionary of Scientific and Technical Terms Second Edition (page 926) "a state of matter intermediate between that of crystalline substances and gases in which a substance has the capacity to flow under extremely small shear stresses and conforms to the shape of a confining vessel, but is relatively incompressible, lacks the capacity to expand without limit, and can possess a free surface" makes the position beyond doubt.

It also to be emphasised that, as we have noted, that the machine without its accessories sprays dry mix.

7. The department has classified the goods under Heading 8479.10 on the ground that its Explanatory Notes at page 1190 exclude machines for spreading mortar or

concrete or for spraying gravel into road or similar surfaces from Heading 8424 includes under Heading 8479. The Assistant Collector has held that the expressions "spreading" and "spraying" are synonymous. We are not able to appreciate his reasoning that if these expressions are not synonymous there was no need to exclude concrete spreading machine from heading 8424 "as it would not fall otherwise". Machines for spraying cement etc. are specifically mentioned at page 1188 as falling under Heading 8424.20. The words "spreading" and "spraying" are not synonymous as reference to any dictionary would indicate. The Concise Oxford Dictionary indicates the meaning of "spready" (in the context in which it is to be applied) as "cause to cover a larger surface (spread butter on bread)". The meaning of spray as "throw (liquid) in the form of spray". The noun form of the "spray" is said to be "water or other liquid flying in small drops from the force of the wind, the dashing of waves, or the action of atomizer etc." It is thus clear that spraying involves the use of pressure or force to disperse small particles of liquid or solid. In common usage also these words are clearly distinguishable. No one talks about spraying butter on bread; for example it is precisely because of the distinction that the exclusion note had been called for. It is also to be noted that the note excludes machines for spreading water or concrete or for spraying gravel into road etc. The use of the different words with regard to different commodities is obviously not incidental.

The department's reasoning for including under Heading 8474 is, therefore, without basis.

8. Once the classification of the goods under Heading 8424 is decided, their eligibility to the benefit of Notification No. 59/87-Cus., dated 1st March, 1987 under S.No. 17 also has to be accepted since the machine does not spray, paint varnish, oils, distemper or cement which are excluded. In the result, therefore, the appeals are allowed. Goods are ordered to be classifiable under Heading 8424 with the benefit of Notification No. 59/87-Cus.