

thermax Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-10-1995

Reported in : (1996)(81)ELT417TriDel

Appellant : thermax Ltd.

Respondent : Collector of Central Excise

Judgement :

1. These are two appeals regarding the same issue one filed by the appellants M/s. Thermax Ltd. against the Order No. 105/CEX/1991, dated 18-12-1991 and another filed by the department against the Order No.P-219/93, dated 30-9-1993 of the Collector (Appeals) in favour of the Shirke Structural Pvt. Ltd. 2. The learned counsel Shri V. Lakshmi Kumaran stated that the appellants M/s. Thermax manufacture GIC SILO Systems meant for storage of grains etc. The dispute has arisen regarding the correct classification and the rate of duty applicable in the case of their product. The rival entries are :- Heading 84.79 (in which the departmental authorities have classified) & Heading 84.36 (which the assessee has claimed) "Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders".

4. They have filed the pamphlets showing the photographs and sketches of their product and its structure and functions.

5. It was their contention that it is classifiable as Agricultural machinery for storage of grains and oil seeds as it is intended for use by farmers and farmers' cooperatives. It has devices for grain handling, loading and unloading and (sic) and safeguards grains against rains, rodents, insects and fungi so that they can be stored for a longer duration with no deterioration in quality.

6. The Silos are supplied with standard accessories as well as optional ones including a temperature sensing device and level indicator, ...

graincleaner and begging system etc.

7. In this connection, he would also like to mention that the agricultural machinery can be broadly classified into three types, (iii) other agricultural machinery including post harvesting machinery covered by Heading 84.36.

It was their contention that it is a post harvesting machinery. He urged that Professor of Agriculture and Member of ICAR is also here and his view may also be heard in this respect. Learned Professor stated, in the main, that it is correct that agriculture includes post harvesting operations.

8. Learned counsel stated that their alternative submission was that it may be classified under 84.37 which covers agricultural machines for cleaning, sorting or grinding of grains etc.

9. It was also his contention that it would be incorrect to classify the product under 84.38 as the same is a residuary item and in any case it could not be classified under 84.79 because the same is meant for machines and mechanical appliances having individual functions not specified or included elsewhere in this chapter; and apart from being residuary item it cannot cover their system which performs more than one function and is not having individual functions.

10. Learned counsel Shri Nankani stated that he adopts all the arguments advanced by the learned counsel Shri V. Lakshmi Kumaran but would like to add certain factual aspects of their case and emphasise his view point particularly with reference to 84.37.

11. In their case the assessee had initially claimed classification under 84.37 but the Assistant Collector had changed the classification to 84.79 (vide impugned adjudication order). The Collector (Appeals) on the other hand had accepted their alternative prayer regarding classification under 84.36 and it is the department which has now come in appeal.

12. In this connection, it is their submission that their main contention is that it was correctly classifiable under 84.37. From the pamphlet filed by them, it will be seen that their SILO Grain Storage Complex is not simply a bin for storage but a complex system for scientific grain preservation and handling which is mainly used by various industrial units such as milling plants etc. for storage of purchased grains till it is used. Hence, Heading 84.37 which includes machinery used in the milling industry other than farm type machinery also is appropriate.

13. In this connection, he is filing a list of his main customers most of which are various mills using agricultural produce as for example, those having Soyabean or Mustard Oil plants or Barley Milling plants or Palm Kernel mill or Cattle feed milling plant, Sugar Mills or Grain Milling plants for distil-lary etc.

14. It was, therefore, his contention that their complex system was usable by farmers and agricultural cooperatives as well as by milling industry, and their main customers have been the later ones.

15. Therefore, it was their contention that their plant is classifiable under 84.37 and in the alternative under 84.36.

16. Learned counsel Shri Lakshmi Kumaran also stated that although their prayer is for classification under 84.36 but he has no objection if their product is held to be classifiable under 84.37 because it was usable by milling industry as well.

17. It was also the contention of both the Id. counsels that whether it is classified under 84.36 or 84.37 in either case the product will be eligible for the benefit of exemption Notification No. 111/88, dated 1-3-1988 which covers both these headings.

18. Learned D.R. opposed the prayer. He drew attention to the order-in-original passed by the Additional Collector and emphasised that the main product of both parties is a SILO which is nothing but a storage system and storage systems are not covered by 84.32, 84.33, 84.34, 84.36 or 84.37 which among themselves covers all types of agricultural machinery.

19. In response to a query from the Bench, he agreed that the cost of this product is so high that the farmers can hardly afford it and it is capable of being used for storage by anybody and not necessarily farmers or farmers' cooperatives and further it can be installed at any place outside the farm or in a factory or otherwise and as admitted by the learned counsel Shri Nankani it is being used for industrial purposes hence it cannot be called as agricultural machinery.

20. Further, it need not be used only by industry engaged in the milling industry and 84.37 covers only the machinery used in the milling industry for specified purposes and other than farm type machinery. Therefore, Silos would fall under 84.38 as machinery not specified or included elsewhere in the chapter and those items having individual functions have to be classified under 84.79 which covers such machines and mechanical appliances which have individual functions.

21. It was also his contention that HSN or BTN also confirms this view point.

22. It was his further contention that since neither 84.38 nor 84.79 are covered by exemption Notification No. 111/88, dated 1-3-1988, therefore, the benefit of this notification could not be extended to the product.

23. We have considered the above submissions. We observe that the catalogue/pamphlets produced before us giving the description of use of the product and the list of customers filed before us by the learned Counsels show that the item is not simply a storage bin for grains etc.

but a complex system incorporating many devices or sub-systems and having arrangements for load', ing and unloading, handling or airtion of grain as well as safeguarding the grains and ensuring that its quality is maintained as far as possible. It can be used both on and off of the farms by agriculturists or their

cooperatives as well as by the industry using farm produce. Hence, it cannot be considered as purely an agricultural machinery only. In other words, it has multiple uses. In the circumstances, it can be classified only under 84.36 or 84.37 depending upon its principal use, standard and optional accessories. In America, this type of machinery is used by individual farmers also but in India, from the list of customers produced before us, it appears that it is being used mostly by milling industry at present. Hence, in our opinion, it will be more appropriate to classify it under Heading 84.37.

24. Headings [84.78] and 84.79 are residuary entries which can be considered only if a product could not be classified in any of the more specific headings. Since in our opinion, these plants are classifiable under 84.37, both 84.78 and 84.79 go out of picture.

25. Further, in view of the above position, the assesseees are also entitled to the benefit of exemption Notification No. 111/88 as amended.

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