(2007) 07 SC CK 0008

In the Supreme Court Of India

Case No : Civil Appeal No. 1176 of 2006

HMT Ltd. APPELLANT

Vs

Commnr. Central Excise and Customs, Aurangabad RESPONDENT

Date of Decision : 13-07-2007

Acts Referred:
Central Excise Rules, 1944 — Rule 173Q
Central Excises and Salt Act, 1944 — Section 11A, 16

Citation : (2007) 214 ELT 10 : (2007) 2 SCR 363 : (2007) 8 SCR 343

Hon'ble Judges : Tarun Chatterjee, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : Ajay Mahithia, Rajesh Kumar and Kailash Chand, for the Appellant; K. Radhadrishnan P. Narasimhan and B. Krishna Prasad, for the Respondent

Final Decision : Allowed

Judgement

Arijit Pasayat, J.—Challenge in this appeal is to the judgment of the Customs, Excise & Service Tax Appellate Tribunal, West Regional Bench at Mumbai (in short ''CESTAT'') which dismissed the appeal filed by the appellant.

2. The background facts in a nutshell are as under:

The assessee is engaged in the manufacturing of machinery and parts thereof falling under Chapter 84 of Central Excise Tariff Act, 1985 (in short the ''Tariff Act''). Alleging that the assessee had miss-classified the following products, show cause notices were issued proposing to levy duty of Rs. 14,37,805/-. According to the revenue the relevant products were miss-classified as under;

(i) Skid mounting type milk /cream Pasteurizer S.H. 8434.10 (ii) Chilling plant 8434.10 (iii) Milk /cream chillers 8434.10 (iv) Milk/ cream Pasteuriser 8434.10 (v) Milk /cream /ghee pumps 8434.10 (vi) Milk & cream separators 8434.10 (vii) Butter Packing Machine 8434.10 (viii) Parts of above machineries 8434.90

3. In the show cause notices, it was proposed to classify the goods mentioned at Sl. Nos. (i) to (iv) under Chapter Heading 8419.10 and Chapter sub-heading

8419.90 (for the parts) and the machine at Sr. No. (v) under Chapter sub-heading 8413.19 and parts thereof as 8413.99. It was proposed to classify the goods at Sr. No. (vi) under Chapter sub-heading No. 8421.10 and parts thereof under Chapter sub-heading No. 8421.90 and the items at Sr. No. (vii) under Chapter sub-heading 8422.80 and parts thereof under Chapter sub-heading 8422.90. All the machines according to the show cause notice are used as Heat Exchangers i.e. they are used for chilling, cooling and pasteurizing purpose by process involving a change in temperature and as per the functions performed by these goods with respect to Chapter 84 of Explanatory Notes. It was, therefore, proposed to classify them in the aforesaid manner. The assessee submitted its reply and supported its classification. After considering the show cause notices, reply and personal hearing, the Assistant Commissioner, Central Excise & Customs confirmed the demand and made the following classifications.

(i) Skid mounting type milk/cream Pasteurizer

(ii) Chilling plant

(iii) Milk Cream Chiller

(iv) Milk Cream Pasteurizer

4. Under Chapter sub heading No. 8419.10 and parts of the above machinery under chapter sub heading No. 8419.90 chargeable to duty @ 13% adv.

(v) Milk/ cream/ghee pumps under chapter sub heading No. 8413.19 and parts thereof under CSH No. 8413.99 chargeable to duty @13% adv.

(vi) Milk/Cream Separators under CSH No. 8421.10 and parts thereof under CSH No. 8421.90 @13% adv.

(vii) Butter packing machine under CSH No. 8422.80 and parts thereof under CSH No. 8422.90 @ 13% adv.

5. All the four demands were confirmed involving a total demand of Rs. 14,37,805/- u/s 11A of the Central Excise Act, 1944 (in short the ''Act''). Penalty of Rs. 25,000/-was also imposed under Rule 173Q of Central Excise Rules, 1944 (in short the ''Rules''). The Commissioner (Appeals) confirmed the demand. So far as the levy of penalty is concerned, he set aside the penalty.

6. The assessee took the stand before the CESTAT that items 1 to 7 are covered under Chapter heading 84.34 and for Sr.No. 8 under Chapter heading 8434.90. The authorities below applied Note No. 2 of Chapter heading 84 and HSN Explanatory Note excluding such items which are in the nature of Pasteurizer/ chiller etc. from the coverage under Chapter heading 84.34. Revenue supported the orders of the authorities below.

7. CESTAT found that as per HSN Explanatory Note to Chapter heading 84.34 the machines for processing milk depend on. the principle of heat exchange and they are excluded from coverage under Chapter heading 84.34 and the heading also

excludes refrigerating appliance (whether or not specifically designed for cooling or keeping milk and milk cooling vats incorporating evaporator of the refrigerating unit from Chapter heading 84.34). It was further noted that HSN Explanatory note also excluded the machines for wrapping or weighing the product from Chapter heading 84.34.

8. The CESTAT upheld the impugned order and rejected the appeal.

9. In support of the appeal, learned Counsel for the appellant submitted that the authorities below have not appreciated the essence of various entries, the HSN Explanatory note and Chapter headings and sub-headings.

10. Learned Counsel for the revenue on the other hand supported the impugned judgment of the Tribunal.

11. Chapter 84 deals with Nuclear Reactors, boilers, machinery and mechanical appliances and parts thereof. The relevant portion of the Chapter reads as follows:

1. XX XX XX XX 2. Subject to the operation of Note 3 to Section XVI, a machine or appliance which answers to a description in one or more of the heading Nos. 84.01 to 84.24 and at the same time to a description in one or other of the heading Nos.84.25 to 84.80 is to be classified under the appropriate heading of the former group and not the latter.

Heading No. 84.19 does not, however, cover:

(a) XX XX XX (b) XX XX XX (c) XX XX XX (d) XX XX XX (e) Machinery or plant, designed for mechanical operation in which a change of temperature, even if necessary is subsidiary.

Heading No. 84.22 does not cover:

(a) Sewing machines for closing bags or similar containers (heading No. 84.52); or

(b) Office machinery of heading No. 84.72

Heading No. 84.24 does not cover:

Ink jet printing machines (heading No. 84.43 or 84.71)

12. The Explanatory Notes also need to be noted. The elevant portion reads as follows:

84.34 Milking machines and dairy machinery.

8434.10- Milking machines

8434.20- Dairy machinery

8434.90- Parts

13. This heading covers mechanical milking machines, and other machinery, whether for farm or industrial purposes, used in the treatment of milk or for converting it into other dairy products.

(I) Milking machines: xx xx xx

(II) Machines for Processing Milk.... The majority of machines for processing milk depend essentially on the principle of heat exchange and are therefore excluded (heading 84.19) e.g. apparatus for pasteurization, stassanisation or sterilization; apparatus for condensing or drying milk; milk coolers.

The heading further excludes:

(a) Refrigerating appliances (whether or not specially designed for cooling or keeping milk) and milk-cooling vats, incorporating an evaporator of a refrigerating unit (heading 84.18)

(b) Cream separators, filter-presses and other filtering or clarifying machinery or apparatus (heading 84.21). (Simple filter funnels and milk strainers are, however, classified according to the constituent material).

(c) Machines for washing milk containers, and milk bottling or canning machines (heading 84.22)

(III) Machinery for converting milk into other dairy products: (A) Butter making machines (1) xx xx

(2) XX XX XX XX (3) XX XX XX XX (4) ...but not including machines which also wrap or weigh the product (heading 84.22 and 84.23)

(B) Cheese making machines (1) xx xx xx

(2) ...but not including machines which also wrap or weigh the product (headings 84.22 and 84.23)

(III) Parts: xx xx

14. Even on a bare perusal of the Note No. 2 to Chapter heading 84.34 and HSN Explanatory Notes show.; that the view of the CESTAT is on terra firma. In 261655 it was held that the view of the Tribunal in classification matters unless patently wrong should not be interfered with. Above being the position, we find no merit in this appeal which is accordingly dismissed. There will be no order as to costs.