

CASE NO.:
Appeal (civil) 4234 of 2000

PETITIONER:
Western India Plywoods Ltd.

RESPONDENT:
Collector of Customs, Kochin

DATE OF JUDGMENT: 07/10/2005

BENCH:
Ruma Pal & S.H. Kapadia

JUDGMENT:
JUDGMENT

KAPADIA, J.

Whether, in the facts and circumstances of this case, the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as "the tribunal") was right in classifying "motor-vibrator with actuators" under residuary sub-heading 8479.89 of Customs Tariff Act, 1975 (for short "CTA"), is the question which arises for determination in this civil appeal filed by the assessee against the impugned judgment of the tribunal dated 10.11.1999.

The appellant herein imported a complement of pulp-making machinery for conversion of wood-chips into pulp. The said machinery comprised of five components, namely, delibrator, screw feeder chutes, motor vibrator with actuator, sealing water system and high temperature protection equipment. According to the appellant, the function of the motor vibrator is to work in conjunction with the delibrator in feeding the wood-chips into the screw feeder at a pre-determined rate. According to the appellant, since the said motor vibrator works in conjunction with the delibrator, it constitutes an integral part of the pulp-making machinery.

It is the case of the appellant that the said motor vibrator with actuator is classifiable under CTA: SH 8439.91 whereas according to the department it is classifiable under CTA: SH 8479.89.

We quote hereinbelow relevant headings:

"Heading 8439.91: - Parts of machinery for making pulp of fibrous cellulosic material.

Heading 8479.89: - Machinery and mechanical appliances having individual functions, not specified or included anywhere in this chapter."

It is evident from the above that the latter heading is a residuary item which is applicable only if the machinery in question does not fall within any other heading. It is well settled that the application of the residuary tariff entry must always be made with a good deal of caution as it is attracted only when no other provision expressly or by necessary implication applies to the goods in question. [See: Bharat Forge and Press Industries (P) Ltd. v. Collector of Central Excise, reported in (1990) 45 ELT 525]. In the matter of classification, identification of an entity is the primary step. Identification is concerned with goods and not with the description of goods. The description would be relevant for the application of a particular tariff entry to the imported goods. In several cases, a single tariff item refers to a large number of goods of different types. It is not possible to encapsulate them in completely comprehensive titles. Therefore, the titles of sections, chapters and sub-chapters are for ease of reference. A note in a section or a chapter is for that section and that

chapter alone.

The basic question which was required to be examined by the tribunal was - whether the entire complement of pulp-making machinery imported as a single entity constituted one single item consisting of separate components. In the present case, the tribunal has classified the imported motor vibrator in CTA: SH 8479.89 solely on the basis of clause (5) of the explanatory notes to the HSN, which reads as follows:

"5. Vibrator Motor consisting of an electric motor with eccentric discs fitted to the protruding ends of the shaft, generating radial vibrations which are transmitted to the apparatus or appliance (chutes, bins, hoppers, conveyors, compacting appliance, etc.) to which the vibrator motor is fixed."

In our view, the tribunal has failed to consider the various provisions of section XVI and chapter 84 as appearing in the CTA and in HSN. Note 2(b) of section XVI lays down that in the absence of a specific heading, a part suitable for a particular machine is classifiable under the heading applicable to that machine. Section XVI in CTA and in HSN is captioned "'machinery and mechanical appliances'". Section XVI makes a distinction between "'machinery'" and "'machines'" (See: Note 5 to section XVI). Further, according to note 7 to chapter 84, machines used for more than one purpose have to be classified according to their principal purpose. Therefore, note 7 classifies "'machines'" according to their functions. Where a function is relevant for classification and where a machine is capable of performing two or more complementary or alternative functions, they have to be classified according to their principal purpose. In the present case, the motor vibrator with actuator regulates the flow of wood-chips into screw feeder at a pre-determined rate and, therefore, it is not a prime-mover only, as held by the tribunal. This aspect needs in-depth examination. Lastly, section XVI of HSN covers mechanical or electrical machinery. It is not confined to machines. In the present case, the appellant imported a full complement of pulp-making machinery and it submits that the motor vibrator with actuator is an integral part of the pulp-making machinery: In the explanatory notes to the HSN, it is made clear that items falling under headings 84.25 to 84.78 would cover machines which are classifiable by reference to the field of industry in which they are used, regardless of their particular functions. This explanation has also not been considered by the tribunal.

As stated above, in the matter of classification, unless the department is in a position to establish that the goods in question can by no conceivable process of reasoning be brought under CTA : SH 8439.91, resort cannot be had to the residuary heading 8479.89.

On account of non-consideration of various aspects enumerated above, we set aside the impugned judgment and remit this case to the tribunal for its decision in accordance with law. Accordingly the appeal is allowed, with no order as to costs.