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M/S. WESTERN INDIA PLYWOODS LTD.

v.

COLLECTOR OF CUSTOMS, KOCHIN

OCTOBER 7, 2005

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[RUMA PAL AND S.H. KAPADIA, JJ.]

C

Customs Tariff Act, 1975—SH 8439.91 and SH 8479.89—Import of Pulp making machinery—Machinery comprising of five components including motor vibrator with actuator—Classification of motor vibrator with actuator—CEGAT classifying it under residuary heading 8479.89—Challenged by the importer—Held: Residuary heading is applicable only if machinery does not fall within any other heading—The function of Motor vibrator with actuator is to regulate the flow of wood chips into screw feeder at a predetermined rate and therefore it is not a prime mover as held by CEGAT—This aspect

D

requires in-depth examination—Matter remanded back for reconsideration.

Appellant imported a complement of pulp-making machinery for conversion of wood-chips into pulp. The said machinery comprised of five components, namely, defibrator, screw feeder chutes, motor vibrator with actuator, sealing water system and high temperature protection equipment. CEGAT classified the imported motor vibrator under CTA: 8479.89.

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In appeal to this Court, appellant contended that the motor vibrator works in conjunction with the defibrator in feeding the wood-chips into the screw feeder at a pre-determined rate, hence constitutes an integral part of the pulp-making machinery and is classifiable under CTA: SH 8439.91 and not under CTA: SH 8479.89.

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Allowing the appeal and remitting back the matter to CEGAT, the Court

HELD: 1. 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 be residuary heading 8479.89. [220-G, H; 221-A]

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2.1. The residuary item 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. 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 of goods 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.

[221-B, C, D]

2.2. 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". 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. [221-G, H; 222-A, B, C, D]

A *Bharat Forge & Press Industries(P) Ltd. v. Collector of Central excise, (1990) 45 ELT 525, relied on.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4234 of 2000.

B From the Judgment and Order dated 10.11.99 of the Customs, Excise and Gold (Control) Appellate Tribunal, Circuit Bench, Cochin in F.O. No. 3032/99 in A. No. C/725 of 1994-B2.

T.L.V. Iyer, Jay Kishore Singh and Subramonium Prasad for the Appellant.

C R. Mohan, Additional Solicitor General, R. Nedumaran, Rajiv Rufus, Sanveer Mehlwal and P.Parmeswaran for the Respondent.

The Judgment of the Court was delivered by

D **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.

E 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. F 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.

G 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:

H **“Heading 8439.91: - Parts of machinery for making pulp of fibrous**

cellulosic material. A

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. B C D

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: E

“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.” F

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 G H

- A 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.
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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.

D.G.

Appeal allowed.