

M/S. HMT LTD.

v.

COMMNR. CENTRAL EXCISE & CUSTOMS, AURANGABAD

JULY 13, 2007

[DR. ARIJIT PASAYAT AND TARUN CHATTERJEE, JJ.]

Central Excise Tariff Act, 1985—Chapter heading 84.34 and HSN Explanatory Note to the heading—Machines used for industry of milk and milk products—Machines in the nature of pasteurizer/chiller etc.—Excluded from the heading—Propriety of—Held: In view of the chapter heading and HSN Explanatory Note to the heading, machines for processing milk, refrigerating appliances and machines for wrapping or weighing the products are excluded from the chapter heading—Central Excise Act, 1944—s. 11 A—Central Excise Rules, 1944—r. 173 Q.

Assessee-manufacturer classified the machines i.e. Skid mounting type milk/cream pasteurizer S.H., chilling plant; Milk/Cream chillers, Milk/Cream Pasteurizer, Milk/cream/ghee pumps, Milk and cream separators; Butter Packing Machine and parts of the above machines under Chapter 84.34 of Central Excise Tariff Act, 1985. The authorities applied Note 2 of Chapter heading 84 and HSN Explanatory Note excluding such items which were in the nature of pasteurizer/chiller from the coverage under Chapter Heading 84.34. Customs, Excise and Service Tax Appellate Tribunal (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 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). HSN Explanatory note also excluded the machines for wrapping or weighing the product from Chapter heading 84.34. The order of authorities below was upheld. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1. Heading 84.37 'Milking machines and dairy machinery', covers mechanical milking machines, and other machinery, whether for farm

A or industrial purposes, used in the treatment of milk or for covering it into other dairy products. The majority of machines for processing milk depend essentially on the principle of heat exchange and are therefore excluded (heading 84.19). 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). (c) Machines for washing milk containers, and milk bottling or canning machines (heading 84.22). Machines which also wrap or weigh the product are excluded from the heading Butter Making Machines and Cheese Making Machines (heading 84.22 and 84.23) and (headings 84.22 and 84.23). [Para 13] [348-A, B, C, D, E, F, G]

2. Even 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. The view of the Tribunal in classification matters unless patently wrong should not be interfered with. [Para 14] [349-A, B]

D *Commissioner of Central Excise v. V. Carrier Aircraft*, (2006) 6 SCALE 564, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1176 of 2006.

E From the Final Judgment & Order dated 21.10.2005 of the Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench at Mumbai in Appeal no. E/1417/00-Mum.

Ajay Mahithia, Rajesh Kumar and Kailash Chand for the Appellant.

F K. Radhadrishnan, P. Narasimhan and B. Krishna Prasad for the Respondent.

The Judgment of the Court was delivered by

G DR. ARIJIT PASAYAT, J. 1. 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:

H 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 mis-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 mis-classified as under; A

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

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 pasteurising 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. E

"(i) Skid mounting type milk/cream pasteurizer F

(ii) Chilling plant G

(iii) Milk Cream Chiller

(iv) Milk Cream pasteurizer H

A 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.”

C 5. All the four demands were confirmed involving a total demand of Rs.14,37,805/- under Section 11-A 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.

E 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.

F 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 G for wrapping or weighing the product from Chapter heading 84.34.

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

H 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.

(III) Parts: xx xx"

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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 *Commissioner of Central Excise v. V. Carrier Aircraft* (2006) 6 SCALE 564 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.

B

K.K.T.

Appeal dismissed.