M/S NIRULAS CORNER HOUSE PVT. LTD. A

v.

COLLECTOR OF CUSTOMS, BOMBAY

APRIL 28, 1999

[A.P. MISRA AND R.P. SETHI, JJ.] B

Customs Tariff Act, 1975—Sections 2 and 3 Headings 84.15, 84.19, 84.26, 84.30 (1) & 84.59(2) Applicability of—In classification of Can Filler, Fruit Feeder and Ripple Machine—These machines imported under a single order together with continuous ice cream freezer—Held, these machines were independent and not accessories as claimed by the appellant—Hence, rightly classified under Heading 84.19 and 84.30(I) and not under Heading 84.15 and liable to CVD under Excise Tariff Item 29-A(I)—Further, continuous ice cream freezer rightly classified under Heading 84.15—Excise—Central Excises and Salt Act, 1944, Items 29-A(I) and 68. C D

Appellant had imported under one single order in its single consignment of plant and machinery namely, "continuous ice cream freezer and alleged accessories such as Electronic Doser, Can Filler, Fruit Feeder and Ripple Machine". According to the appellant, the main function of the machines imported was to make ice cream. The ice freezer was said to be refrigerating equipment classified as such under heading 84.15(I) of the Customs Tariff Act. None of the aforesaid so-called accessories could function independently. Being refrigerating machinery the imported machines were claimed to be not dutiable and that no countervailing duty under Tariff No. 68 of the Central Excise Tariff was attracted, the appellant filed refund claim before the Customs Department. The Assistant Collector rejected the claim of the appellant. The appeal preferred before the Collector (Appeals) and Appellate Tribunal were also rejected. Hence this appeal. E F

It was contended by the appellant that the said articles were not independent machines but were accessories; if these machines could not be classified under 84.15(I) then they could be classified under Heading 84.26 or 84.59(2). G

Dismissing the appeal, this Court

HELD : 1.1. It is not disputed that the appellant had imported machines H

A and spare parts for the purposes of making ice cream. It is also not denied that ice cream freezer is a refrigerating equipment classified under heading 84.15. There is no dispute regarding the payment of duty and CVD in respect of continuous ice cream freezer. The dispute relates to the payment of the duty with respect to the Can Filler, Fruit Feeder and Ripple Machine. Sub B item (I) of Tariff Item No. 29-A deals with refrigerating and Air Conditioning appliances and machinery which provides that refrigerator and other refrigerating appliances shall be such appliances which are ordinarily sold or offered for sale as ready assembled units such as ice makers, bottle coolers, display cabinets and water coolers. Continuous ice cream freezer C was, therefore, rightly assessed under the aforesaid entry.

[921-H; 922-A-B]

1.2. A perusal of the Xerox copies of the literature relating to Can Filler, Fruit Feeder and Ripple Machine, it is seen that all such machines are independent and not accessories. The mere fact that the so-called D machines can be connected with freezers would not change their character to being independent machines. The aforesaid machines are intended only to give better production of the ice cream. It cannot be said but for those machines freezer cannot be utilised for the purpose of the manufactures of the cream. The purpose of the aforesaid machines is to facilitate in filling E the tubes with ice cream or one or two-three flavours, add fruit syrups, chocolate etc. to produce multi flavoured product. [923-D-E]

Collector of Customs v. *Enfield India Ltd.*, (1991) 51 ELT 172 SC, distinguished.

F *Joy Ice Cream, Bombay* v. *Union of India,* (1989) 39 ELT 521, distinguished.

1.3. The statutory authorities under the Customs Tariffs Act and the Tribunal, are justified, holding that the Can Filler, Fruit Feeder and Ribble Machine are independent machines and not accessories as claimed by the G appellant. [923-H; 924-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 138 of 1986.

From the Judgment and Order dated 23.5.85 of the Central Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in A. No. C.D. (SB) H A.No. 695/83-B in order No. 390 of 1985-B.

Sajan Nandini, Ms. Andini and Ms. Rajni Natarajan for the M/s. JBD & Co. for the Appellant. A

Bhaskar Gupta, Dilip Tandon, P. Parmeswaran and V.K. Verma for the Respondent.

The Judgment of the Court was delivered by B

SETHI, J. The short point in controversy is as to whether, Can Filler, Fruit Feeder and Ripple Machine are accessories to the continuance ice cream freezer or are independent machines covered by Chapter 84.19 and 84.30(1). The Customs, Excise and Gold (Control) Appellate Tribunal (for short CEGAT) C held that the three items did not merit classification under heading 84.15(1) and dismissed the appeals. Not satisfied with the judgment of the CEGAT the assessee has preferred this appeal reiterating all pleas which were negatived by the Appellate Tribunal.

The appellant had imported under one single order in its single D consignment of plant and machinery namely, "continuous ice cream freezer add with alleged accessories such as Electronic Doser, Can Filler, Fruit Feeder and Ripple Machine with spare parts." According to it, the main function of the machines imported is to make ice cream. The ice freezer is stated to be refrigerating equipment classified as such under heading 84.15(1) of the E Customs Tariff Act. None of the aforesaid so-called accessories can function independently as each of them has reportedly been specially made to be connected and to work along with the ice-cream freezer. Being refrigerating machinery, the imported machines are stated to be not dutiable. Countervailing duty under Tariff Item No. 68 of the Central Excise Tariff is not attracted. Feeling that the appellant was not liable to pay the duty, the refund claim for F Rs. 3,44,986.55 was filed before the authorities of the Custom Department in the year 1980. The Assistant Collector of Customs vide his Order dated 12.11.1981 rejected the claim vide Annexure 'C'. The appeals preferred before the Appeal Collector and Appellate Tribunal were rejected on 31.1.1983 and 23.5.1985 respectively.

G

We have heard the learned counsel appearing for the parties and perused the relevant record. It is not disputed that the appellant had imported machines and spare parts for the purposes of making ice cream. It is also not denied that ice-cream freezer is a refrigerating equipment classified as such under heading 84.15. There is no dispute regarding the payment of the duty and H

A CVD in respect of continuous ice cream freezer. The dispute relates to the payment of the duty with respect to the Can Filler, Fruit Feeder and Ripple Machine. Sub item (1) of Tariff Item No. 29-A deals with refrigerating and Air conditioning appliances and machinery which provides that refrigerators and other refrigerating appliances shall be such appliances which are ordinarily B sold or offered for sale as ready assembled units such as ice makers, bottle coolers, display cabinets and water coolers. Continuous ice cream freezer was, therefore, rightly assessed under the aforesaid entry.

The appellant had originally claimed re-assessment of the entire consignment under heading 84.15(1) at the rate of 40 per cent with levy of C CVD. But later on submitted that if those could not be classified under the said heading, they be classified as different items. Can Filler, Fruit Feeder and Ripple Machine were stated to be covered under heading 84.26 or 84.59(2). The appellant did not produce original catalogue literature or working manual of the machines but relied upon Xerox copy of some literature before the D Assistant Collector of Customs who after examination of such material rightly found:-

> "However from Xerox copy it is seen that sketch as revealed in xerox copy goes to show that this is a independent ready assembled unit having caster for universal movement and therefore does not require E erection at site. This unit can be moved from place to place without any necessity of erection at sight. Therefore this item requires to be classified according to its function independently. This item has therefore been correctly classified u/h 84.30 (1) with CVD u/i 68 CET. the fourth item is "Can Filler" which has been assessed u/h 84.19 @ F 60% plus 15% plus CVD 8% u/i 68 CET. In this case also applicants have produced zerox copy of some extract of literature. According to this, the can filler can be directly linked to and or more continuous freezers to fill tube with ice cream of one, two or three flavours. It is therefore evident that this can filler is capable of working in line with ice cream manufacturing plant. However, this can filler is ready G independent unit having firm stand. It does not require any sort of erection for its working though this unit can work in line with ice cream manufacturing plant. As such this has been correctly assessed u/h 84.19 with CVD u/i 68 CET according to its function. The fifth item "Ripple Machine" has been assessed to duty @ 60% plus 15% plus H 8% CVD u/i 68 CET. Here also xerox copy of some extract of literature

is produced. According to the literature, the Ripple Machine will add fruit syrups, chocolate etc. to ice cream being fed directly from the continuous freezers to produce. This machine consists of a sturdy, positive piston pumps with electric motor, speed variator and reducer, hopper to hold the ripple sauce and a mixer/distributor head for feeding the sauce in such a way that a stripped effect is achieved with the finished product. From the sketch of the machine it is seen that it is an independent ready assembled unit having firm stand requiring no erection at sight for its functioning though it can also be linked and worked with continuous freezer,"

The learned counsel appearing for the appellant took great pains to satisfy us that the Can Filler, Fruit Freeder and Ripple Machine were not independent machines but accessories. However, in view of the findings of the authorities based upon the working of the machines, we cannot accept his submissions. We have also perused xerox copies of the literature relating to the aforesaid machines and find that all such machines are independent and not accessories. The mere fact that the so-called machines can be connected with freezers would not change their character of being independent machines. The aforesaid machines are intended only to give better production of the ice cream. It cannot be said that but for those machines freezer cannot be utilised for the purpose of the manufacture of the ice cream. The purpose of the aforesaid machines is to facilitate in filling the tubs with ice cream of one or two-three flavours add fruit syrups, chocolate etc. to produce multi flavoured product. The reliance of the learned counsel for the appellant on *Collector of Customs* v. *Enfield India Ltd.*, (1991) 51 ELT 172 SC is misplaced inasmuch as, the order of the Tribunal was set aside, "in the facts and circumstances of the case." The argument in that case was that there was possibility of the goods falling under different categories which is not the position in the instant case. Similarly, the judgment in *Joy ice Cream, Bombay* v. *Union of India,* (1989) 39 ELT 521 Bombay does not in any way advance the case of the appellant. In the case it was found that the freezer imported was meant to be utilised as part of ice cream manufacturing plant which had no utility by itself. As already noticed the alleged accessories being Can Filler, Fruit Feeder, and Ripple Machine in the instant case, are not such machines which cannot be utilised independently. The High Court in that case had accepted the plea of the assessee on being satisfied that "It would, appear, therefore, that the freezer is meant to be utilised as a part of an ice cream manufacturing plant and has no utility by itself." The statutory authorities under the Act and the Tribunal, were, therefore, justified to hold

A that the Can Filler, Fruit Feeder and Ripple Machine are independent machines and not accessories as claimed by the appellant. There is no merit in this appeal which is accordingly dismissed, but without any order as to costs.

R.K.S. Appeal dismissed.