

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I**

APPEAL Nos. E/50619 & 50620/2015-EX[DB]

(Arising out of Order-in-Original No. 04-05/Commr./C.Ex./GZB/2014-15 dated 30/09/2014 passed by Commissioner Customs, Central Excise & Service Tax, Ghaziabad)

M/s Sona Foods (India) (in Appeal No. E/50619/2015) &

Sh. Narender Kumar (in Appeal No. E/50620/2015)

Appellant(s)

Vs.

**Commissioner Customs, Central Excise &
Service Tax, Ghaziabad**

Respondent(s)

Appearance:

Shri Manoj Kumar (Advocate)

for Appellant(s)

Shri Pradeep Kumar Dubey (Superintendent) AR

for Respondent(s)

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 26/12/2018

Date of Decision : 26/12/2018

FINAL ORDER NOs **72926-72927 / 2018**

Per: Ashok Jindal

The appellants are in appeal against the impugned order wherein demand has been confirmed by classifying the part of rice machinery i.e., belt conveyor and bucket elevator under Chapter Heading No. 8428 of Central Excise Tariff Act, 1985.

2. The facts of the case are that the appellants are manufacturer of 'Rice Milling Machinery' along with belt conveyors and Bucket Elevator and various other parts of Rice Mills Machinery. Revenue is of the view that as the appellants are manufacturing conveyors and elevators which are more appropriately classifiable under Chapter Heading No.8428 of Central Excise Tariff Act, 1985, therefore, they cannot be classified under Chapter Heading No.8437 of Central Excise Tariff Act, 1985 as machinery using in milling. In these set of facts the proceedings were initiated against the appellant to classify the same under Chapter Heading No.8428 of Central Excise Tariff Act, 1985 and the show cause notice was issued to both the appellants. The matter was adjudicated the belt conveyors and bucket elevators were classified under Chapter Heading No.8428 as Belt Conveyors and Bucket Elevators of general use in nature and same are appropriately classifiable under Chapter Heading No.8428 of Central Excise Tariff Act, 1985. Against the said order the appellants are before us.

3. Heard the parties.

4. Considering the submissions and on careful consideration of statement made by the appellant during investigation, we find that the said issue stands settled by this Tribunal in the case of Alpsco Grintech Pvt Ltd vide Final Order No. A/63373-63375/2018-EX[DB] dated

25.10.2018 and in the case of Annapurna Agronics Machinery Pvt. Ltd. vide Final Order No.A/63546/2018-EX[DB] dated 05.12.2018 has observed as under:-

“6. For better appreciation to decide the classification, the tariff heading No. 8428 and 8437 of Central Excise Tariff Act are extracted herein below:-

8428	<i>Other Lifting, Handling, Loading or Unloading Machinery (For example, Lifts, Escalators, Conveyors, Teleferics)</i>		
8428 10	<i>Lifts and skip hoists:</i>		
	<i>Lifts</i>		
8428 10 11	<i>Lifts of a kind used in buildings</i>	<i>u</i>	<i>12%</i>
8428 10 19	<i>Other</i>	<i>u</i>	<i>12%</i>
8428 10 20	<i>Skip hoists</i>	<i>u</i>	<i>12%</i>
8428 20	<i>Pneumatic elevators and conveyors</i>		
	<i>Conveyors</i>		
8428 20 11	<i>Belt conveyors</i>	<i>u</i>	<i>12%</i>
8428 20 19	<i>Other</i>	<i>u</i>	<i>12%</i>
8428 20 20	<i>Pneumatic elevators</i>	<i>u</i>	<i>12%</i>
	<i>Other continuous-action elevators and conveyors, for Goods or materials:</i>		
8428 31 00	<i>Specifically designed for underground use</i>	<i>u</i>	
	<i>12%</i>		
8428 32 00	<i>Other, bucket type</i>	<i>u</i>	
	<i>12%</i>		
8428 33 00	<i>Other, belt type</i>	<i>u</i>	
	<i>12%</i>		
8428 39 00	<i>Other</i>	<i>u</i>	
	<i>12%</i>		
8428 40 00	<i>Escalators and moving walkways</i>	<i>u</i>	
	<i>12%</i>		
8428 60 00	<i>Teleferics, chair-lifts, ski-raglines, traction</i>	<i>u</i>	
	<i>12%</i>		
	<i>Mechanisms for funiculars</i>		
8428 90	<i>Other machinery:</i>		
8428 90 10	<i>For Coal handling</i>	<i>u</i>	
	<i>12%</i>		
8437	<i>Machines for cleaning, sorting and grading seed, grain Or dried leguminous vegetables machinery used in the Milling industry or for the working of cereals or dried leguminous vegetables, other than farm-type machinery</i>		
8437 10 00	<i>Machines for cleaning, sorting or grading seed, grain</i>	<i>u</i>	
	<i>Nil</i>		
	<i>or dried leguminous vegetables</i>		
8437 80	<i>Other machinery:</i>		
8437 80 10	<i>Flour mill machinery</i>	<i>u</i>	
	<i>Nil</i>		

8437 80 20	Rice mill machinery	u
Nil		
8437 80 90	Other	u
Nil		
8437 90	Parts	
8437 90 10	Of four mill machinery	kg.
Nil		
8437 90 20	Of rice mill machinery	kg.
Nil		
8437 90 90	Other	kg.
Nil		

The case of the Revenue is that as per HSN Explanatory notes to Chapter Heading No. 8437, the machine used in milling industry. However, the heading does not cover conveyors and elevators. Therefore, the revenue wants to classify conveyors and elevators under heading No. 8428. On the other hand, the contention of the appellants is that as per HSN Explanatory notes itself these machines are feeders and same is covered under explanatory notes as feeder machines designed to ensure local and even flow of grain to the crushing rollers.

7. We have also seen the Section Note 3,4,5 to Section 6 of the Central Excise Tariff Act which are expected herein below:-

3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function.

5. For the purposes of these notes, the expression "machine" means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of chapter 84 or 85."

On going through the above provisions, we find that the conveyors and elevators manufactured by the appellants are designed, specifically, for rice mills which has not been disputed by the adjudicating authority in the impugned order, wherein it has been observed by the adjudicating authority that **“the goods in question are basically conveyors & elevators, which are used for the transportation of the rice in a rice mill from one stage to the another. They can be horizontal as well as vertical as per the requirement of the Industry”**. These conveyors and elevators manufactured by the appellants specifically designed for use in rice mills are supplied alongwith the other rice mill machinery to the rice millers. These facts are not in dispute, therefore, the combination of machines and the conveyors and elevators supplied by the appellants alongwith other rice milling machinery to the rice millers is a combination of machine which ultimately perform the function of rice milling. Thus, as per Section notes the entire machinery is classifiable under heading 8437 which is for machinery used in milling industry and it is not disputed that these elevators and conveyors being manufactured by the appellants were not used for milling industry. The Central Excise Tariff is clear with respect to this aspect that the said machines if supplied as a combination of machines would be covered under the main heading 8437, therefore, the reliance on the explanatory note to HSN is not warranted as the HSN explanatory note is not a law but are they are only guiding factor for classification when the section note to the Central Excise Tariff is clear on the aspect wherein it has been clarified that the said items are to be classified under the main machine. Therefore, the department cannot place reliance upon the explanatory notes to change the classification of the said items.

7. We further take a note of the fact that in the case of Commissioner of **Central Excise, Kanpur vs. Rationale Iron & Steel Co. (supra)**, this Tribunal has categorically observed that explanatory notes have no force of law and they are only for guidance whereas the findings of the Ld. Commissioner

(Appeals) is on the basis of Central Excise Tariff Act, 1985 enacted by Indian Parliament. Therefore, it was held that the ground raised by the Revenue is not sustainable. Admittedly, in the case in hand, the revenue is heavily relied on the HSN explanatory note to Section 16 of the Central Excise Tariff Act to say that the conveyors and elevators are classifiable under heading No. 8428 is not applicable to the facts of the present case. We further take a note of the fact that explanatory note itself classifying feeder machines designed to ensure local and even flow of grain to the crushing rollers as classifiable under chapter heading No. 8437. The main function of the machines, these conveyors and elevators is take the grain from one machine and if the same in other machine alongwith its machines. Therefore, it is clear that elevators and conveyors are in industry of grain feeder and perform the function of feeding grains in various machines used in rice mill. In these set of observations, the merit classification of the conveyors and elevators used in specifically designed for rice milling are classifiable under chapter heading No. 8437. We further take a note of the fact that in the case of **Moped Assembly (supra)** this Tribunal has observed that sheet metal components for use exclusively in rice milling industry classifiable under chapter heading No. 8437. Admittedly, in this case, these conveyors and elevators are specifically used for rice milling industry as the part of the composite machinery of rice milling, therefore, having merit classification under chapter heading No. 8437.

8. We have also gone through the decision of the Hon'ble Apex Court in the case of **G. S. Auto International Ltd. (supra)** wherein the Hon'ble Apex Court observed as if the items specifically made for specific machine would be classifiable as part of the said machine and not under the general heading. Admittedly, in the case in hand, the conveyors and elevators are for specific use of rice milling industry and nowhere else, in that circumstances, the same merits classification as per the rice milling machinery under tariff heading No. 8437.

9. The Ld. AR heavily relied on the decision of **Eminence Equipments Pvt. Ltd. (supra)** to say that conveyors and elevators used for rice mills is to be classified under chapter heading No. 8428. We have gone through the facts in the case of **Eminence Equipments Pvt. Ltd. (supra)** was not manufacturing the elevators and conveyors only for rice millers but were supplying the same to other industries like breweries etc., therefore, the items manufactured by **Eminence Equipments Pvt. Ltd (supra)** were of general nature and not for specific use to the machines of milling industry. Further, the conveyors and elevators manufactured by **M/s Eminence Equipments Pvt. Ltd. (supra)** did not come under the category of composite machines as they were supplying only elevators and conveyors and not combination of machines. Therefore, the facts of the present appellants are distinguishable from the facts of the case of **M/s Eminence Equipments Pvt. Ltd (supra)**. Moreover, in the case of **Eminence Equipments Pvt Ltd. (supra)** this Tribunal has not considered the chapter note 3, 4 and 5 of Section 16 of Central Excise Tariff Act, 1985. Therefore, on that account also the decision of the said case is not applicable in the present case.

10. Moreover, the appellants have produced various technical opinions as well as the data from Customs and Central Excise Department wherein the importer as well as exporter of elevators and conveyors used specifically designed for rice milling have been classified under heading No. 8437 of the CETA. Therefore, we hold that the decision in the case of **Eminence Equipments Pvt Ltd. (supra)** is not applicable to the facts of the present case.”

5. In view of the above, we hold that the belt conveyors and bucket elevators specifically manufactured as the part of rice milling machinery along with other machinery of rice mill by the appellants merit classification under chapter heading No. 8437 of CETA, 1985. Therefore, impugned order deserves

no merit, hence set-aside. Consequently, the demand of duty against the appellant along with interest is not sustainable. Consequently, no penalty is imposable on the appellants.

6. In result, the impugned order is set-aside and the appeals are allowed with consequential relief, if any.

(Dictated and Pronounced in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Ashok Jindal)
Member (Judicial)

Ankit