CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

C/13-14/2008-DB

[Arising out of Order-in-Appeal No. 113/2007 dated 24/09/2007 passed by Commissioner of Customs (A), Bangalore]

SREE RAMA COFFEE WORKS
NEHRUNAGAR, MANDHYA, KARNATAKA

Appellant(s)

Versus

C.C-BANGALORE-CUS
C.R. BUILDING, QUEENS ROAD,
P.B.NO. 5400,
BANGALORE
KARNATAKA
560001

Respondent(s)

Appearance:

Raghavendra B Hanjer
No. 545m 12th Cross, 8th Main,
JP Nagar, 2nd Phase,
Bangalore- 560078

For the Appellant

Mr. Matrupsaharan, AR

For the Respondent

Date of Hearing: 17/07/2018
Date of Decision:26/07/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21001-21002/2018

Per : P.ANJANI KUMAR

M/s. Sree Rama Coffee Works, Mandya (the appellants) have imported Probat Roasting Unit vide Bill of Entry 364213 dated 13.02.2017; Model LP 25 from Germany and classified the goods under 85167990 claiming benefit of exemption under S.No. 252 (A), S.No. 2 of list 32 (A) of Customs Notification No. 21/2002. The Department has denied the classification and exemption thereby and classified the coffee roasting machine under CTH 84198190. Aggrieved by this order, the appellants had preferred an appeal. The Commissioner (A) has upheld the OIA vide Order No. 113/07 dated 24.09.2007 and further classified the machine under CTH 84193100. Hence this appeal.

2. The learned counsel for the appellants submitted that the appellant has not been given any notice before the Department changed in the classification and denied the exemption availed, therefore, entire proceedings are vitiated by law. CTH 84193100 or CTH 84188190 do not cover coffee roasting machine and they cover driers meant for agricultural products and other items meant for coffee making hot drinks or for cooking or heating foods. Hence, the classification of coffee roasting machine under either by this CTH is not sustainable. Even though LPG is used for heating the coffee roasting machine, electricity is used for running the machine and hence, the

impugned goods is rightly classifiable under CTH 85167990; the very intention of S.No. 252 (A) of Notification No. 21/2002 Customs is to cover machinery or equipment for use in the plantation sector; even though the S.No. 1 (ii) of List 32A covers the coffee roasting machine intended for industrial use, falling under tariff item 85167990 as admitted in the impugned order; coffee roasting machine is not covered by any other Heading; the very intention of the Notification is to cover a coffee roasting machine intended for industrial use in respect of their classification in chapter; in these circumstances the exemption Notification should be construed so as to give meaning to the intention of the Notification by way of rectifying the anomaly as tariff Heading 84167990 does not cover any type of coffee roasting machine. The reliance is placed on the following cases:

(i) CC (Prev.), Amritsar Vs. Mawla Industries Ltd. – 2009 (235) ELT 214 (SC).
(ii) AIDEK Tourism Services Pvt. Ltd. Vs. CC., New Delhi – 2015 (318) ELT 3 (SC).
(iii) ABB Ltd. Vs. CCE., Bhubaneswar – 2000 (121) ELT 666 (Tri.)
(iv) Commissioner of Trade Tax, UP Vs. Khajaria Ceramics Ltd. – 2005 (191) ELT 20 (SC).

3. The learned Departmental Representative has

submitted that as per the technical manual of the manufacturer, the item is **Shop Roaster Type 1.25 GAS-FIRED** for roasting coffee in batches of 12 to 25 Kg; the roasting drum is a gas burner that releases the heat; thus it is clear that the heating/roasting is done by using gas and not by electricity; the machine uses electricity only for rotation of the drum while roasting the coffee beans by the gas burner, since the machine under import uses gas for roasting; the same cannot be considered as Electro-thermic appliance and therefore cannot be classified under the Heading 85167990.

3.1 On the other hand, the Heading 8419 reads as follows:

> ***" Machinery plant or laboratory equipment, whether or not electrically heating (excluding furnaces, ovens and other equipment of Heading 85014), for the treatment or materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing or cooling other than machinery or plant of a kind used for***

domestic purposes". The relevant portion of explanatory notes for the heading 84.19 reads as "the roasting plant frequently consists of cylindrical or spherical receptacles in which the products to be treated (e.g. coffee beans, cocoa beans, cereals or nuts) are subjected to controlled heat by contact with the heated walls of the containers or by a direct stream of air forced through the heating medium (e.g. gas or oil burners or coke fires). These appliances usually incorporate devices which keep the products in constant rotation to ensure uniform treatment and to prevent charring. Other types take the form of perforated, inclined or rotating shelves in a chamber fed with heated gases".

From the above, it is evident that the coffee roasting units using gas as the heating medium is specifically covered under the Heading 84.19. The Commissioner (A) was right in classifying the goods under Heading 84193100 as the coffee beans are agricultural products and machinery used for heating or roasting coffee beans finds merits classification under CTH 84193100.

3.2 The Heading 8516 CTA' 75 covers "Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; Electro-thermic Hair- dressing apparatus (e.g. hair dryers, hair curlers, curling tong heaters) and hand dryers; electric smoothing irons; other electro-thermic appliances of a kind used for domestic purposes). This group includes all electro-thermic machines and appliances provided; they are normally used in the households.

3.3 From the above, it is very clear that the Heading 8516 covers only electro-thermic appliances of a kind used for domestic purposes and not the appliances/machines where the heating is not by way of electricity and which are in the nature of machines for industrial use. Even the wording in the List 32(A) of the said Notification makes it clear that the benefit is available for coffee roasting unit only if it is for use in coffee plantations sector and coffee roasting machine is classifiable under the tariff item 85167990; therefore the benefit of exemption is not available to the applicants.

4. The Departmental Representative has further submitted that the terms of the Notification ought to be incorporated in its own language, and no word can be added or deleted from the language as held by the Hon'ble Supreme Court in the case of ***S.P. Gupta Vs. UOI reported in AIR 1982 SC 299***, wherein it was held that there is unanimity of all the courts in the world and this is that where the words or the language used in a statute are clear and cloudless, plain, simple and explicit unclouded and un-obscured, intelligible and pointed so as to admit of no ambiguity, vagueness, uncertainty or equivocation, there is absolutely no room for deriving support from external side. In such cases, the statute should be interpreted on the face of the language itself without adding, subtracting or omitting words there from. Hon'ble Supreme Court in the case of ***State of Punjab Vs. M/s. Punjab Fibres Ltd. 2004-TIOL-101-SC-CT*** held that "it is settled law that to avail benefits of a Notification the party must strictly comply with the conditions of the Notification.

5. Heard both sides and perused the available records of the case.

6. We find that the brief issue in this case is the classification of the imported coffee roasting machine; the appellants sought to classify it under CTH 85167990 the Heading 8516 machines that run by electricity are the appliances of a kind used for domestic purposes. It is not the case of the appellants that the instrument that are imported machine is for domestic purposes. It is also very clear that from the explanatory notes to the Heading 8516 that it is meant for of a kind used for domestic purposes. The appellants while claiming that the machine was imported for coffee plantation sector cannot classify the machines under CTH 85167990 are only alien with the Heading given in the Notification. The learned Departmental Representative has specifically explained that the roasting machines are classifiable under 8419 and this Heading does not specifically indicated that it should be an electric machine and it also talks about roasting being one of the processes that such machines may undertake. The explanatory notes for the Heading 8419 reads as under:

> ***"This frequently consist of revolving cylindrical or spherical receptacles in which the products to be treated (e.g., coffee, beans, cocoa beans, cereals or***

nuts) are subjected to controlled heat by contact with the heated walls of the containers, or by a direct stream of air forces through the heating medium (e.g., gas or oil burners or coke fires). These appliances usually incorporate devices which keep the products in constant rotation to ensure uniform treatment and to prevent charring. Other types take the form of perforated, inclined or rotating shelves in chamber fed with heated gases".

7. We find that the learned Commissioner (A) has held that the coffee roasting units using gas as the heating medium is specifically covered under the Heading 84.19. The main process of Heading is done by the gas in the case of the impugned machines, they are ruled out from the Heading 8516. We are not inclined to accept the contentions of the appellants that since electricity is used for rotating cylinder etc., the machine be treated as electric machine. What is important is to see the source of energy for the main function of the machines. The impugned machine is gas-fired for the main function of roasting and therefore, as per the construction of the tariff Heading 8419,

coffee beans being agricultural products used for heating or roasting of coffee beans finds merits classification under CTH 84193100. Therefore, we do not find any reason to interfere with the order of the learned Commissioner (A).

7.1 Coming to the classification given in the Notification, we find that the Notification has given the description under List 32A (ii) not only mentions coffee roasting machine intended for industrial use at S.No. (ii) but also say machines falling under CTH 85167990. As rightly submitted by the learned AR, in order to avail the exemption Notification both the conditions under to be satisfied as there is no ambiguity in the wording of the Notification. We do find that the lower authority cannot interpret the Notification in a piecemeal manner and to say that the exemption is available to coffee roasting machine intended for industrial use even if they do not fall under the tariff Heading mentioned therein. As per the judgment of the Hon'ble Supreme Court cited by the learned AR, the benefit of the Notification cannot be extended as there was no ambiguity in the wording of the Notification. It is not for the Tribunal to go into the legislative intent of the Notification. Moreover, we find that classification of an imported item should depend on its description and nature in terms of relevant section or chapter notes of Customs Tariff Act, 1975 rather than the words of Notification.

8. In view of the above, we reject the appeals filed by the appellant and upheld the classification of the coffee roasting machine under CTH 84193100 of Customs Tariff Act.

(Order was pronounced
in Open Court on **26/07/2018**)

P. ANJANI KUMAR **TECHNICAL MEMBER**	**S.S GARG** **JUDICIAL MEMBER**

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