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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/803 /2005 - CU[DB] Date 01/04/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To:
M/S BHOMIA BUTTONS PVT LTD
GH 12/225 PASCHIM VIHAR, NEW DELHI

M/S BHOMIA BUTTONS PVT LTD Appellant
Vs
THE COMMISSIONER OF CUSTOMS (IMPORT), Respondent
DELHI

I am directed to transmit herewith a certified copy of **Final order No. C/115 2009 CU[DB]** dated 24.03.09

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
THE COMMISSIONER OF CUSTOMS (IMPORT),
NEW CUSTOMS HOUSE, DELHI – 110037.

2. Adv. / Consult MR.PRABHAT KUMAR, ADV., B-51(BASEMENT)
SARVODAYA ENCLAVE NEAR MOTHER INTERNATIONAL
SCHOOL NEW DELHI

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4 J.C.D.R.
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12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
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Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:24.3.2009

Customs Appeal No.803 of 2005

Arising out of the order in appeal No.CC(A)/303 & 304/ACU/Delhi I/2005 dated 19.7.05 passed by the Commissioner (Appeals),Customs , Delhi.

For Approval and Signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	~~No~~ Yes
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellant | | Respondent
M/s Bhomia Buttons Pvt. Ltd. vs. C.C. (Import) New Delhi

Appearance:

Shri Prabhat Kumar, Advocate for the appellant
Shri A.K. Madan, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Oral Order No. C/115/09

Per Justice R.M.S. Khandeparkar:

Heard at length the learned Advocate for the appellants and the learned DR for the respondent. Perused the records.

2. This appeal arises from the order dated 19th of July, 2005 passed by the Commissioner of Customs (Appeals), New Delhi, dismissing the appeal filed by the appellant against the assessment order dated 19th of April, 2003

of Assistant Commissioner. The Assistant Commissioner of Customs had finalised the assessment of the machinery imported by the appellant under the Bill of Entry No.415061 dated 18th December, 2002 and 432948 dated 28th January 2003 thereby had rejected the claim of the appellant for the grant of exemption under Notification No.21/2002 serial No.257, List No.34, Serial No.9.

3. It is the case of the appellant that that the machinery imported by them is squarely covered under Serial No.9, 25 of List 32 of Serial No.257 of the said Notification. On the other hand, it is the case of the Department that the machinery imported by the appellant being button making machinery considering the description of the said machinery, the appellant is not entitled to claim any benefit under the said Notification.

4. While assailing the impugned orders of the lower authorities, the learned Advocate appearing for the appellants submitted that the catalogue in relation to the machinery and the invoices placed before the authorities clearly disclose the description of the machinery which would reveal that it is the button making machinery and the product manufactured thereby is designed for use in the leather industry and is therefore, squarely covered by the said Notification. He further submitted that in fact, the authorities have accordingly granted the said benefit to some of importers of similar product but has denied the same only to the appellant. He further submitted that merely because the product manufactured from the machinery in question could also be used in textile industry that itself can not be a justification to deny the benefit under the said notification. The additional function performed by the machinery which is covered under the said notification cannot, according to the learned Advocate , be a justification to deny the benefit under the said notification. He also submitted that it is not necessary that the importer of such machinery must necessarily have leather industry but any machinery which could be designed for use in leather industry irrespective of the fact that whether the importer is having leather industry or not would be entitled to claim exemption under the

said notification. The reliance was sought to be placed in the decisions in the matter of Commissioner of Customs, Kolkata vs. Rupa and Co. Ltd. reported in 2004 (170) ELT 129 (SC); Escorts Limited vs. C.C., New Delhi reported in 1996 (88) ELT 379 (Tri.); Escorts Limited vs. C.C., Bombay reported in 1998 (98) ELT 717 (Tri.); Ravalgaon Sugar Farm Ltd. reported in 1997 (92) ELT 500 (Tri); C.C., Mumbai vs. Arifta Die Tool Engg. reported in 2002 (150) ELT 853 (Tri-Mumbai); Twenty First Century Printers vs. C.C., Bombay reported in 2003 (162) ELT 1045 (Tri.- Delhi).

5. On the other hand, learned DR submitted that the authorities below after considering the materials placed on record and the description of machinery revealed therefrom have rightly rejected the benefit under the said Notification to the appellant. He further submitted that once the machinery does not satisfy the description under the entry which is described as being entitled for exemption under the said notification, the appellant cannot make any grievance about the denial of the benefit under the said notification. Placing reliance on the decision in the matter of C.C.E., Bombay vs. Axlo Machines Tools Ltd. reported in 1996 (86) ELT 375 (Tri) and Batliboi & Co. vs. C.C., Bombay reported in 1987 (32) ELT 118 (Tri.), learned DR submitted that if the exemption notification is to be strictly construed and if the description of the machinery is not in consonance with the description of the machinery under the entry in the notification, the assessee cannot claim the benefit under such notification. He further submitted that in any case the additional function performed by the machinery would disentitle the benefit which is available strictly to the machinery meant for the particular function for which exemption is granted.

6. It is not in dispute that the machinery which is sought to be imported by the appellant is button making machinery. It is, however, the contention of the appellant that buttons which are to be manufactured are for the purpose of use in the leather industry and could be utilised for the purpose of leather jackets and leather coats and therefore, the machinery is squarely covered under the said Notification and that the fact that the machinery is

automatic boring and milling machines is not in dispute and therefore, it would be squarely covered under serial No.9 under the said notification.

7. Chapter 84.65 deals with "the machines, tools including machines for nailing, stapling, glueing or otherwise assembling for working wood, cork , bone, hard rubber, hard plastics or similar hard materials" and sub-heading No.8465 95 00 speaks of " drilling or morticing machines". It would be advantageous to reproduce the relevant portion of the Notification in question –

"S.No.	Chapter or Heading No. or sub-heading No.	description of goods
257 ..	84 or 90	Goods specified in List 34 designed for use in leather industry or the footwear industry.
....	......	....
....	......	....

List 34

(1) Air blast dust removing machine (2) All types of staking machines except slocum (slow combing process) (3) Automatic Drying machine (4) Automatic Lacing machine (5) Automatic Leather Perforating and/or Punching machine (6) Automatic Lock-Stitching Cylinder Bed Bartacker (7) Automatic machine to control, to slant and to glue leather straps (8) Automatic Milling machine (9) Automatic Milling-Boring Machine (10) Automatic or semi-automatic hydraulic press (750 tonnes or more) (11) Automatic Padding machine (12) Automatic Spraying machine (13) Automatic Tacks - Reinforce machine (14) Automatic Work Unit for assembling the complete Insole (15) Back Part Moulding machine (16) Band-saw with or without Flier (17) Bandknife Splitting machine (18) Belt Punching and cutting machine (19) Bobbin machine with counter (20) Boot leg ironing machine (21) Bottom Leather Grain Crack Tester (22) Bottom roughing and/or scouring machine (23) Box Stamping machine (24) Buckle Stappling machine (25) Button Hole (Eyelets end) machine

....

...."

8. The notification No.21/2002-Cus, the relevant extracts from which have been reproduced herein above under serial No.257 clearly refers to goods specified in List 34 designed for use in the leather industry or footwear

industry. The expression 'design for use' clearly discloses that the goods specified in List 34 in order to avail the benefit under the Notification should necessarily be for use in the industry described therein. It is not the every product which could satisfy the description in List 34 under the Notification, that would be entitled to claim exemption under the said notification. Such benefit is essentially restricted to goods which are designed for use in leather industry or footwear industry. In other words , in order to claim the benefit under the said notification in relation to the goods specified in list 34, the two conditions must be satisfied – (i) the goods must be designed for use in the industry or (ii) such industry must be either leather industry or footwear industry. It is not that the goods which can be used in any industry, other than those specified in the said notification, but satisfying the description in List 34, would be entitled to claim the benefit under the said Notification. Undoubtedly, an exemption notification is to be strictly construed is well settled law. Once the assesse is able to show that the goods are covered under the exemption notification, the assessee could avail the benefit under such notification. However, in relation to goods which do not satisfy the description as well as the circumstances mentioned in the notification for availing benefit under the notification, no exemption from the payment of duty can be claimed under the said notification.

9. The authorities below while dealing with the claim of the appellants for exemption under the said notification have clearly observed that there is no dispute regarding the description of the machinery that it is button making machinery and indeed, the finding in that regard by the assessing authority has been reiterated by the lower appellate authority and we do not find any challenge to the said finding. It is, however, strenuously argued on behalf of the appellant that it is fully automatic boring and milling machine and therefore, the authorities have erred in denying the benefit under the said notification which are according to the appellant is available under item No.9 of List 34 of serial No.257 of the said Notification. Indeed, the bills of entry undoubtedly describe the machinery to be fully automatic

boring and milling machine. The documents placed before the authorities and which have been considered by the authorities include invoices in relation to machinery and copy of the catalogue in relation to the machinery. The learned Advocate for the appellant has repeatedly referred to all those documents in the course of arguments.

10. The description of the machinery in the copy of the catalogue which was repeatedly read over by the learned Advocate for the appellant in the course of argument reads thus – " A particularly goods machine for standard buttons shirts, blouses, knitwear, pyjamas, jackets, trousers and coats; in other words, most of the buttons made in this sector."

11. The Invoice dated 16.9.2002 in relation to the machine sought to be imported describes the machinery as "machinery for button making industries, doublevanguard multiform top 60 standard version: combined automatic machine for turning, boring and milling buttons up to size 60", with standard accessories". Similar description is found except in relation to size to be "48" instead of size "60" in the invoice dated 10.12.2002. The description of the machinery in the invoice dated 28th July 2004 reads thus-

> ***"AUTOMATIC MACHINE FOR THE PRODUCTION OF BUTTONS, BEADS, ACCESSORIES MADE IN POLYESTER /WOOD/HORN AND DESTINATED TO THE TEXTILE INDUSTRY***
> ***DOUBLEVANGUARD MASS DMK – STANDARD version: fully automatic milling and scoring machine complete with standard accessories.***
> ***VANGUARD HPK –STANDARD: fully automatic milling and scoring machine complete with standard accessories***
> ***Vanguard 1000 : Fully automatic milling and scoring machine complete with standard accessories."***

The description of the machinery under invoice dated 20.12.2004 reads thus -

> ***"AUTOMATIC MACHINE FOR THE PRODUCTION OF BUTTONS, BEADS, ACCESSORIES MADE IN POLYESTER /WOOD/HORN AND DESTINATED TO THE TEXTILE INDUSTRY***
>
> ***VANGUARD HPK –STANDARD: Fully automatic milling and scoring machine complete with standard accessories***
> ***VANGUARD 1000 : Fully automatic milling and scoring machine complete with standard accessories.***
> ***Total amount net CIF Nava Sheva"***

The description of the machinery in the invoices dated 30.11.2004 and 25.10.21004 reads as under:

> ***"Automatic machines for the production of buttons beads, accessories made in polyester, wood, horn, destinated to the textile industry***
> ***DOUBLEVANGUARD MASS DMK – STANDARD version fully automatic milling and scoring machine complete with standard accessories.***
> ***Total amount net CIF Nava Sheva (Sea)***
> ***04 CASES GROSS WGT. KG. 3754***
> ***NET WGT. KG. 3074***
> ***MARKS DK SHELL***
> ***GURGAON 122050***
> ***24012/1-4***
> ***We certify and swear in present invoice to contain a true and faithful account".***
>
> ***"AUTOMATIC MACHINE FOR THE PRODUCTION OF BUTTONS, BEADS, ACCESSORIES MADE IN POLYESTER/WOOD/HORN AND DESTINATED TOD THE TEXTILE INDUSTRY***
> ***DOUBLEVANGUARD MASS DMK- STANDARD***
> ***Version: Fully automatic milling and scoring machine complete with standard accessories".***

12. The description of the machinery in the invoices clearly reveals that the machinery is "destinated to the textile industry". There is no dispute that the machinery is button making machinery or that it is automatic milling and scoring machine. The machinery with such description would be entitled to claim the benefit of exemption under Notification No.21/2002, but subject to condition stipulated in the said notification which refers to goods which are designed or planed for use in leather industry. It is not the case of the appellant that apart from the description as revealed from the invoices and the catalogue, any other material was placed to justify the claim for exemption in terms of the said notification. There was noting placed on record to show that the goods in respect of which the exemption was claimed were designed for use in the leather industry. The contention on behalf of the appellant , however, is that the description of the machinery as disclosed in the catalogue clearly reveals that the button can be used for jacket and coat and therefore, it can be used for leather jackets, and leather coats .

First of all, the notification nowhere speaks of any possible eventuality of the use of goods in leather industry. On the contrary, it clearly and specifically refers to the goods designed for the use in the leather industry. Neither the catalogue nor the invoice nor any other document discloses that the goods in respect of which exemption was sought to be claimed are designed for use in leather industry. It is not the incidental use that the notification speaks of for the purpose of exemption. The expression 'designed' discloses that the goods necessarily meant for industry specified under the said Notification. Though it was the contention on behalf of the appellant right from the day one that the goods satisfied the requirement of serial No.257 List 34 Item No.9 and 25, the appellant failed to establish the fact that the goods were designed for use in the leather industry.

13. The description of the machinery as quoted above clearly shows that the product was designed for the use in the textile industry. It does not anywhere state that ~~the~~ it was essentially for the use in leather industry. It was exactly on this count, the Assistant Commissioner of Customs had clearly held that button making industry is not a leather industry and the machinery in question is not entitled for the benefit of the said Notification. Obviously, no material was produced before the authorities to justify that the goods were satisfying the requirement of serial No.257 read with Item No.9 of the List 34 under the said Notification No.21/2002.

14. As regards the contention of the learned Advocate on behalf of the appellant that in any case, the goods imported by the appellant are squarely covered by Item No.25 of List 34 pf serial No.257 of the said Notification is concerned, it is pertinent to note that no such contention was sought to be raised either before the lower appellate authority or before the original authority. Nevertheless, even assuming that such contention was sought to be raised before the lower authority, it is totally devoid of substance. Item 25 speaks of button hole machine (eyelet machine). Apart from the fact that the item on the face of it relates to button hole machine, the expression used in the bracket as "eyelet" clearly means a hole in cloth or in some

other material. However, in order to understand the meaning of an expression under an item in the list of a notification, the same cannot be read independently and to the exclusion of the other items in the list and totally ignoring the serial No.257. The description of a product claiming exemption under any of the items under list 34 the same should necessarily relate to the goods designed for use in a leather industry. Undisputedly, there is noting on record to disclose that the machines which have been imported by the appellant are meant for button holes in leather jacket or leather coat. The machines are essentially for manufacture of buttons. It may be by a process of automatic boring , milling machine etc. That itself would not make the machine a button hole machine under item 25 of List 34 of serial No.257 of the said notification and under no circumstances, it can be presumed to be a machine meant for button hole in leather jackets or leather coats. Investigation should disclose that such goods are designed for use in leather industry.

15. The decision of the Apex Court in Rupa and Co. Ltd. supra is on the point that " For the purpose of manufacture of garments , it cannot be said that only stitching and knitting machines are required. Apart from stitching and cutting, the manufacturer may himself manufacture the yarn or fabric. That was totally a different issue and is not relevant for the decision in the matter in hand. It is well settled law that no ruling can be applied to a case unless there is similarity of facts and the issues for consideration in both the cases are common. The facts of Rupa and Co. Ltd. case were totally different from the facts of the matter in hand.

16. In Twenty First Century Printers case, the Tribunal had held that the principal function of machine imported by the assessee was to produce printed blanks or reels with the brand name, manufacturer's name and any other illustration/legend and hence classification under heading 84.43 of Customs Tariff Act, was appropriate.

17. In Vishal Surgical Equip. Co. Pvt. Ltd. it was held by the Tribunal that exemption benefit should not be denied merely because the instrument also

carries out a function other than those indicated in the Notification. In other words, merely because, the instrument carries out certain functions in addition to the main function which is the subject matter of the notification it cannot be a justification to deny the benefit under such notification. Nevertheless, the assesee will have to establish that the instrument performs the main function which is the subject matter of the notification.

18. In Escorts Tractors Ltd. case, it was held that automatic gear tooth rounding and chamfering machine capable of performing three functions, namely, tooth chamfering, gear deburring , and other rounding was covered at item Nos.36 and 37 under serial No.1 of the Table appended to Notification No.154/86-Cus dated 1.3.86 and therefore, could be subjected to duty at 35% ad valorem as applicable thereto. This is again on the point that merely because some additional functions are performed that itself would not be sufficient to deny the benefit under exemption notification.

19. In Ravalgaon Sugar Farm Ltd. supra, the question involved was whether the form, fill and seal machine with only gas flushing service and not having flushing vacuumising equipment was eligible for exemption under Notification No.125/86-Cus dated 17.2.86 and the Tribunal, following the ratio of the order in Consolidated Petrotech Industries vs. C.C. reported in 1992 (57) ELT 81 (Tri.), held that the goods were entitled for exemption under serial No.17 of Notification No.125/86.

20. The decision in Consolidated Perotech Industries case (supra) was in favour of the assessee. The word "and" used in serial No.17 of the Notification No.125/86 was considered as "or".

21. In Arifta Die Tool Engg. Case (supra), it was held that functions of a jig boring machine include drilling and milling and no sufficient material was placed to say that the machine in question had been designed for and performs drilling and milling as functions equally important as jig boring. Therefore, the benefit of exemption Notification No.40/78-Cus was held to be available. This decision was again on the basis of the Tribunal's decision in Blue Star Ltd. reported in 1990 (50) ELT 186 (Tri.).

22. None of decisions sought to be relied upon by the learned Advocate for the appellants are of any help to the appellants, as they were delivered in the facts and circumstances of the case which were different from those in the case in hand.

23. As regards the decisions sought to be relied upon by the learned DR in Batliboi & Co. Ltd. and Xlo Machine Tools Ltd., it is not necessary to refer to those decisions considering the view that we are taking in the matter in hand. It was also sought to be argued on behalf of the appellants that assuming the machines were to be imported by leather manufacturer, would they be denied the benefit under exemption notification? At the outset, it is to be noted that we are dealing with an appeal against the orders passed by the lower authorities. In any appeal, the scope of investigation has to relate to the points which arise for consideration out of the facts of the case in hand and not on hypothetical issues. Learned Advocate for the appellants may be justified in raising the point in a case wherein issue arises as to whether the leather manufacturer irrespective of the fact that whether the machine imported is designed for use or not in leather industry would be entitled for exemption. In an appeal, the issues can not be decided on hypothetical basis. That apart, the notification on the basis of which exemption is claimed nowhere relates to the class of persons who would be entitled for exemption thereunder. It essentially speaks of the goods designed for use in leather industry. Once the records nowhere disclose the goods imported were designed for use in leather industry, all other issues are rendered redundant. Hence, there is no substance in the points which are sought to be canvassed on behalf of the appellants.

24. Lastly, it is sought to be contended that though such benefit under the said exemption notification has been granted to some of the importers of similar type of machinery, it has been illegally denied to the appellant. There is no cogent material on record to substantiate the contention on behalf of the appellant. That apart, assuming that the Department has granted such exemption in some of the cases either intentionally or otherwise, or

negligently or carelessly or illegally that would not create any right in favour of the appellant to claim the benefit under the said exemption notification contrary to law. One or even more illegalities by one or by some persons can not create any right in favour of others to commit or to insist for commission of similar illegality by others. Rule of parity cannot be invoked to claim illegal gratification.

25. In view of what is stated above, we find no substance in the appeal. Hence it is dismissed.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

scd/