

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench

Court – I

Excise Appeal No. 30058 of 2017

(Arising out of OIO No. HYD-EXCUS-004-COM-023-16-17 dt.18.08.2016 passed by the
Commissioner of Customs, Central Excise & Service Tax, Hyderabad-IV)

Ricetec Machinery Pvt Ltd

Survey No.177 part, Lakshminagar Colony,
Suraram, Rangareddy Dist., Hyderabad – 500 055

.....Appellant

VERSUS

**Commissioner of Central Tax
Medchal**

Opposite Mehdi Function Palace, Lakdikapool,
Hyderabad, Telangana – 500 004

.....Respondent

Appearance

Shri Tej Prakash Toshniwal, Advocate for the Appellant.
Shri V. Srikan Rao, AR for the Respondent.

Coram:

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

FINAL ORDER No. A/30088/2024

**Date of Hearing: 21.02.2024
Date of Decision: 29.02.2024**

[Order per: P. ANJANI KUMAR]

This Appeal has been filed by M/s Ricetec Machinery Pvt Ltd, against the Impugned Order dt.18.08.2016 passed by the Commissioner of Customs, Central Exise & Service Tax, Hyderabad-IV.

2. The brief facts involved in this case are that the Appellants (unregistered, not paying duty) are manufacturers of various machinery such as Grain cleaning machine, Grain De-stoner machine, Grain stone remover, Grain Pre-cleaner, Grain Grader, Gyro Sifter, Rice Whitener, Rice Polisher machine, Silky Rice Polisher, Paddy cleaner, Paddy separator, Husk Aspirator, Vibro Sheller,

Paddy cleaner for Rice Mills, Grain grinder for food industry, Bucket Elevator, Par Boiling Machinery and parts thereof. An investigation was conducted by the Anti-evasion section on the Appellants and on conclusion, Revenue opined that the machinery manufactured by the Appellants requires to be classified as under:

Items manufactured and cleared by Appellant	Classification under Central Excise Tariff Heading, 1985
The parts of parboiling machinery	84199090
Bucket Elevators	84283200
Parts of Bucket Elevators	84313910
Blowers	84145930
Parts of Blowers	84149040
Cyclones	84213990
Parts of Cyclones	84219900
Parts of weigh bridge	84239020
Brass scrap	74040022
MS scrap	72044900
SS scrap	72042190
CI scrap	72041000
Aluminium scrap	76020090
Other articles of steel	73269099
Reducer assembly	73079990
Hopper	73102990
Bolts and Nuts	73181900
Shafts	84831099

3. Accordingly, two Show Cause Notices dt.08.12.2015 & 05.05.2016 were issued to the Appellants seeking demand of duty of Rs.2,86,21,289/- and Rs.25,81,412/- respectively along with interest and penalty. The proposals raised in the SCNs were confirmed by the Original Authority vide Impugned Order. Hence, these Appeals.

4. Shri Tej Prakash Toshniwal, Advocate appearing for the Appellant submits that the confirmation of duty by the Impugned Order is contrary to law and evidence available and it is beyond the scope of SCN; invocation of extended period is not justified. He submits that while the SCNs themselves admit that the Appellants are manufacturing rice mill machinery and spare parts thereof, the confirmation of classification is contrary to the proposition; it is not open for the Department to classify the impugned products under CETH 8437 for certain period and under CETH 8419 for the later period and it is arbitrary; reliance placed on CBEC circular is mis-placed and the circulars cannot travel beyond the Statute; the Adjudicating Authority seriously erred in observing that the invoices issued by the Appellants are not for rice mill machinery and parts

thereof. Learned Counsel submits Brochures of the relevant products and submits that the impugned goods are rice mill machinery and parts thereof rightly classifiable under 8437 of CETA.

5. Learned Counsel for the Appellant also submits that in interpretation of specific tax entries, one should construe the strict meaning to respective entries giving importance to specific entry rather than general entry. He relies on *Alpsco Gaintec Pvt Ltd Vs. Commissioner of Central Excise & Service Tax, Chandigarh-II* [2019 (365) ELT 944 (Tri-Chan)], which was affirmed by the Hon'ble Supreme Court as reported at [2019 (368) ELT A225 (SC)]. He also relies on *Moped Assembly Vs. Commissioner of Central Excise, Madras* [2001 (129) ELT 195 (Tri-Mad)].

6. Shri V. Srikant Rao, learned Authorized Representative appearing for the Revenue reiterates the findings of the Impugned Order and relies on CBEC Circular No. 982/06/2014-CX dt.15.04.2014 issued from F.No. 167/42/2009-CX.1 and submits that in terms of this Circular, the impugned machinery viz., rice par-boiling machinery and dryer would merit classification under CETH 8419 as per Note 2 to Chapter 84.

7. Heard both sides and perused the records of the case. We find that the Revenue seeks to change the classification of the items manufactured and cleared by the appellants. The Revenue relies heavily on the statement of Shri Purandar Reddy, Director of the Appellant company & Incharge of production related matters. On the basis of his statement, it was concluded that the parboiling machine and dryer are self contained machines, which are desgined to be installed independently. Revenue depends on Chapter sub-heading 8419.00 for such classification.

7.1 With reference to Bucket Elevator and parts thereof, Revenue relies on the material available on Wikipedia, Internet, the statement of Shri Purandar Reddy and the explanatory notes to the Chapter sub-heading 8428 under the heading 'continuous machines' and the Tariff heading itself.

7.2 Regarding the blowers and impellers, cyclone & airlock and other goods, viz., 'Housing', 'Flaps', 'Angles/side fans', 'outlet ring assembly', paddy bins, housing covers, MS shafts, rods, Shaft keys, Hopper (some cases with stand) drums, bolts and reducer assembly, Revenue relies on the averment that all of them have independent functions and not necessarily only with the rice manufacturing machinery.

8. We find that other than the statement of Shri Purandar Reddy, Department has not taken any steps to obtain technical opinion of experts in respect of the impugned goods. The fact that the goods are manufactured by the appellants are but for the rice mill industry, as submitted by the appellants. Revenue could not show even a single example of such independent function of the items manufactured and cleared.

"3.....it has not been disputed that the appellants were manufacturing rice mill machinery along with elevators and conveyors which were specifically designed for the machinery manufactured by them. The show cause notice as well as the impugned order have nowhere disputed the fact that the sale of the said items have been made to rice millers only and not to any other industry. The department has solely confirmed the demand on the basis of the explanatory note to HSN wherein it has been mentioned that Heading 8437 would not include conveyors and elevators of Heading 8428. It is to be mentioned that section note 3, 4 & 5 to Section 16 of the Central Excise Tariff Act clearly clarify that where two or more machineries are fitted together to form a function complementary and alternative to each other and consist of individual components then the whole machine is to be classified in the heading appropriate to that function. It is his submission that the machine namely elevators and conveyors are designed specifically for the rice mills and are supplied along with the other machinery supplied to the rice millers and hence it constitutes combination of machines and ultimately perform the function of rice milling and thus as per the Section notes the entire machinery would be classifiable under Heading 8437 which is for machinery used in milling industry....."

9. We further find that the Tribunal had an occasion to go into the classification of the impugned goods in the case of Alpsco Gaintech Pvt Ltd (supra), which was affirmed by the Hon'ble Apex Court. Tribunal held 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	Other Lifting, Handling, Loading or Unloading Machinery (For example Lifts, Escalators, Conveyors, Teleferics)			
8428 10	Lifts and skip hoists:			
	Lifts			
8428 10 11	Lifts of a kind used in buildings	U	12%	-
8428 10 19	Other	U	12%	-
8428 10 20	Skip hoists	U	12%	-
8428 20	Pneumatic elevators and conveyors			
	Conveyors			
8428 20 11	Belt conveyors	U	12%	-
8428 20 19	Other	U	12%	-
8428 20 20	Pneumatic elevators	U	12%	-
	Other continuous-action elevators and conveyors, for goods or materials:			
8428 31 00	Specifically designed for underground use	U	12%	-

8428 32 00	Other, bucket type	U	12%	-
8428 33 00	Other, belt type	U	12%	-
8428 39 00	Other	U	12%	-
8428 40 00	Escalators and moving walkways	U	12%	-
8428 60 00	Teleferics, Chair-lifts, Ski-raglines, traction Mechanisms for funiculars	U	12%	-
8428 90	Other machinery:			
8428 90 10	For coal handling	U	12%	-
8437	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			
8437 10 00	Machines for cleaning, sorting or grading seed, grain or dried leguminous vegetables	U	Nil	-
8437 80	Other machinery:			
8437 80 10	Flour mill machinery	U	Nil	-
8437 80 20	Rice mill machinery	U	Nil	-
8437 80 90	Other	U	Nil	-
8437 90	Parts			
8437 90 10	Of flour 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. We further find that the Tribunal in the case of Moped Assembly (supra), held that sheet metal components for use exclusively in rice milling industry are classifiable under heading 8437 of CETA. Bench has observed as under:

"5. We have heard the arguments of the learned Consultant for the appellants and also perused the evidence on record. We note that the appellants have been filing classification list prior to 1-3-1988 and subsequent to 1-3-1988. We note that in both these classification lists the description of the goods was same and the description confirmed to the description given against Chapter Heading 84.37 in the table annexed to the Notification No. 111/88-CE. We find that the objection that the goods were different and were generally used taken by the authorities only when the appellants claimed the benefit of Notification No. 111/88-CE. We have also gone through the observation of the Collector (Appeals). We find that in para 4 of his order, he held that the sheet metal components manufactured by the appellants were exclusively for use in the rice-milling industries. Thus we find that these observations of the Collector (Appeals) support the view of the appellants that the goods are classifiable under Heading 84.37.

6. We have also perused the case law cited and relied upon by the learned Consultant in the case of Thermax Ltd v CCE (supra) we find that identical view was expressed by this Tribunal after examining the technical literature, pamphlet and catalogue stating that if certain goods in complex machinery may be for exclusive use and if the goods are exclusively used in the rice-milling industry, then they will be classifiable under Heading 84.37.

7. In view of the above, we hold that the goods manufactured by the appellants are classifiable under Chapter Heading 84.37 and further that these goods will be entitled to the benefit of Exemption Notification No. 111/88-CE. The appeal is allowed in the above terms."

11. In view of the above, we are of the considered opinion that the demands confirmed in the impugned order are not sustainable. When the demands are not sustainable, interest and penalty also do not survive. Accordingly, we set aside the impugned order and allow the Appeal.

12. Appeal allowed. Appellant shall be entitled to consequential relief, if any, as per law.

(Pronounced in the Open Court on 29.02.2024)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Veda