IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 46 of 2011

(Arising out of Order-in-Original No.12-16/Commr./CE/Kol-II/Adjn./2010-11 dated 27.10.2010 passed by Commr. of Central Excise, Kolkata-II)

Shri Vineet Bagaria
(M. D., M/s. T & I Gobal Ltd., 11, Jassal House,
4A, Auckland Square, Kolkata-700001)

Appellant

VERSUS

Commr. of Central Excise, Kolkata-II
(15/1, Strand Road, M. S. Building, Customs House, Kolkata-700001)

R**espondent**

With

(i) Excise Appeal No. 47 of 2011 (Shri Chandan Bhattacharya Vs. Commr. of Central Excise, Kol-II (ii) Excise Appeal No. 48 of 2011 (M/s. T & I Global Vs. Commr. of Central Excise, Kol-II) (iii)Excise Appeal No. 59 of 2011 (Commr. of Central Excise, Kol-II Vs. M/s. T & I Global(iv) Excise Appeal No. 309 of 2011 (M/s Vikram India Vs. Commr. of Central Excise, Kol-II) (v) Excise Appeal No. 310 of 2011 (Shri Manoj Sharma Vs Commr. of Central Excise, Kolkata-II) (Vi) Excise Appeal No. 311 of 2011 (M. L. Bhartia Vs. Commr. of Central Excise, Kol-II) (Vii) Excise Appeal No. 335 of 2011 (M/s Zenith Machinery Company Vs. Commr. of Central Excise, Kol-II) (Viii) Excise Appeal No. 83 of 2012 (M/s Mesco Equipments (P) Ltd. Vs. Commr. of Central Excise, Kol-II) (IX) Excise Appeal No. 72088 of 2013 (M/s. Vikram India Limited Vs. Commr. of Central Excise, Kol-II)

(i) (Arising out of Order-in-Original No.12-16/Commr./CE/Kol-II/Adjn./2010-11 dated 27.10.2010 passed by Commr. of Central Excise, Kolkata-II)

(ii) (Arising out of Order-in-Original No.12-16/Commr./CE/Kol-II/Adjn./2010-11 dated 27.10.2010 passed by Commr. of Central Excise, Kolkata-II)

(iii) (Arising out of Order-in-Original No.12-16/Commr./CE/Kol-II/Adjn./2010-11 dated 27.10.2010 passed by Commr. of Central Excise, Kolkata-II)

(iv) (Arising out of Order-in-Original No.25/COMMR./CE/KOL-II/Adjn/2010-11 dated 31.01.2011 passed by Commissioner of Central Excise, Kolkata-II)

(v) (Arising out of Order-in-Original No.25/COMMR./CE/KOL-II/Adjn/2010-11 dated 31.01.2011 passed by Commissioner of Central Excise, Kolkata-II)

(vi) (Arising out of Order-in-Original No.25/COMMR./CE/KOL-II/Adjn/2010-11 dated 31.01.2011 passed by Commissioner of Central Excise, Kolkata-II)

E/46-48/2011, E/59/2011, E/309-311/2011, E/335/2011, E/83/2012, E/72088/2013

(vii) (Arising out of Order-in-Original No.23-24/COMMR./CE/KOL-II/Adjn/2010-11 dated 31.1.2011 passed by Commr. of Central Excise, Kolkata-II)

(viii) (Arising out of Order-in-Original No.03/Commissioner/CE/Kol-II/2011 dated 09.12.2011 passed by Commissioner of Central Excise, Kolkata-IV)

(ix) (Arising out of Order-in-Original No.04/COMMR./CE/Kol-II/Adjn/2012-13 dated 30.10.2012 passed by Commissioner of Central Excise, Kolkata-II)

APPEARANCE :

Mr. S. P. Siddhanta, Consultant, Mr. Arijit Chakraborty, Advocate, Mr. Ajay Sanwaria, CA & Mr. S. P. Majumdar, Advocate for the Appellant/Respondent

Mr. S. Mukhopadhyay, Authorized Representative for the Respondent/Appellant

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77641-77650/2023

Date of Hearing : 21 November 2023
Date of Decision: 21 November 2023

PER R. MURALIDHAR:

The Appellants are manufacturers of various Tea Processing Machineries. They were classifying the product under CET 84388040. They were availing the exemption under Notification No. 06/2006-CE dated 01/03/2006 wherein Tea Leaf Cutting & Rolling Machine falls under Tariff Item 84388040. The Department issued Show Cause Notice on the ground that the Machine falls under CET 8438 90 90 and hence they are not eligible for the exemption granted under Notification No. 06/2006-CE dated 01/03/2006. After due process, the Adjudicating Authority confirmed the demands along with interest and penalties. Being aggrieved, the Appellants are before the Tribunal. Since the issue is common in respect of all the Appeals and admittedly the machineries in question are similar/identical in all aspects, with consent of both the sides, all the Appeals were taken up together for disposal.

2. The Learned Counsel appearing on behalf of MESCO Equipment Pvt. Ltd. submitted as under:-

(i) The CTC Machine manufactured by the appellant or for that matter any CTC Machine can only perform the process of cutting leaf through the Toothed-Rollers. Tea leaves are fed by conveyor belt to the Rollers. In order to get smaller sizes more such Rollers are fixed at intervals with the intervening Conveyor Belts, connecting the Rollers. In the process the tea leaf while being reduced to dust, also automatically turns granular in shape. In this context, the appellant refers to the Photographs of the CTC (Tea Leaf Cutting Machine)as well as the copy of the 'Martin Pride CTC Instruction and Installation Manual', which clearly show that machine is essentially comprised of Conveyor Belts and Toothed-Rollers and the end result is only leaf cutting. There is nothing like integrated tea processing versatile machine, as contended by the Ld. adjudicating authority, so as to deny the benefit of exemption. The Ld. Commissioner has not adduced any evidence to support his view that the CTC (Tea Leaf Cutting Machine) performs any other versatile functions beyond leaf cutting.

(ii) It is stated that the Tea Leaf Cutting machine is a device consisting of two contra-rotating Rollers on which teeth are grooved that provide cutting/tearing of tea leaves. Save and except cutting of tea leaves, the impugned CTC machine has no other function. The Department has not brought in any evidence in support of the allegation that the machine under dispute is an integrated tea processing machine, wherein tea cutting or rolling constituted one of the many activities and thus did not conform to the description 'Tea Leaf Cutting - Rolling machine falling under Tariff Item 8438 80 40', as per the relevant SI. (2) (IV) of the List 32A, appended to the Notification No.21/2002-Cus dated 1.3.2002.

(iii) The fact that the appellant manufactured CTC (Tea Leaf Cutting Machine) is evident from the Work Orders placed at pages from 50 to 57 (Part of Annexure-F) and at pages from 75 to 82 (Part of Annexure-I) of the Appeal cum Paper Book. The various purchasers of such machines also certified that they purchased Tea Leaf (Cutting or Rolling) Machines from the appellant. They also certified that the Tea Leaf Cutting or Rolling Machine is commercially and in Trade Circle is known as CTC Machine. The copies of such certificates have been placed at pages from 44 to 49 (Part of Annexure-E) and at pages from 69 to 74 (Part of Annexure-I) of the Appeal cum Paper Book.

(iv) The Tea Leaf Cutting Machine is commercially known in the Trade Parlance as CTC machine. The appellant sold the machine under the brand name 'Martin's Pride CTC Machine (Leaf Cutting Machine) classifying under CETSH No.8438 80 40 in the central Excise Invoices. The Exemption Notification No. No.6/2006-CE dated 01-03-2006 was rescinded/ superseded by the Notification No. No.12/2012-CE dated 17-03-2012. The appellant continued to classify the impugned goods i.e. Martin's Pride CTC Machine (Leaf Cutting Machine) under CETSH No.8438 80 40 by availing exemption upto 16-03-2012.

(v) It is furthermore contended that the CTC (Leaf Cutting Machine) being a complete machine in itself cannot be classified as "part of other machinery" falling under CETSH 8438 90 90 of the Central Excise Tariff, as held by the ld. Commissioner. The tariff structure under the Tariff heading 8438 read as under:

Tariff Item	Description of goods
8438	Machinery, not specified or included elsewhere in this Chapter, for the industrial preparation or manufacture of food or drink, other than machinery for the extraction or preparation of animal or flxed vegetable fats or oils
8438 10	- *Bakery machinery and machinery for the manufacture of macaroni, spaghetti or similar products:*
8438 10 10	- - - *Bakery machinery*
8438 10 20	- - - *machinery for the manufacture of macaroni, spaghetti or similar products*
8438 20 00	- - - *machinery for the manufacture of confectionery, cocoa or chocolate*
8438 30	- *Machinery for sugar manufacture:*
8438 30 10	- - - Sugar cane crushers
8438 30 90	- - - Other
8438 40 00	- Brewery machinery
8438 50 00	- Machinery for the preparation of meat or poultry
8438 60 00	- Machinery for the preparation of fruits, nuts or vegetables
8438 80	- ***Other machinery**:*
8438 80 10	- - - Auxiliary equipment for extrusion cooking plant
8438 80 20	- - - For production of soya milk or other soya products (other than soya oil)
8438 80 30	- - - Diffusing machines (diffusers)
8438 80 40	**- - - Tea leaf rolling and cutting machine**
8438 80 90	- - - Other
8438 90	***- Parts:***
8438 90 10	- - - Of sugar manufacturing machinery
8438 90 90	**- - - Of other machinery**

(vi) It is stated that the Department has found CTC (Leaf Cutting Machine) to be a machine, having multi-function ability including tea cutting and rolling activity. The Ld. Commissioner in the impugned Order-in-Original has found the said machine, having versatile functions. But still he has chosen to classify the machine as parts of other machinery falling under sub-heading 8438 80 90. It is an incontrovertible fact that CTC (Leaf Cutting Machine), manufactured by the appellant, is a complete machine itself and not a part of any machine. Therefore, it is by no means classifiable under any of the sub-headings of the heading 'Parts:' [8438 90], more specifically as the part 'Of other machinery' [8438 90 90]. It thus appears that the ld Commissioner has failed to classify the product CTC (Leaf

Cutting Machine) in accordance with the Rules of Interpretation of the Tariff. He has erred in not appreciating that from the technical literatures as well as from proof of trade understanding, as adduced by the appellant, it is clear that CTC (Leaf Cutting Machine) is same as 'Tea leaf rolling and cutting machine' (- - - 8438 80 40), which is preceded by triple dash following the entry 'Other machinery:' having single dash (- 8438 80). Similarly, the sub-heading 'Of other machinery' (- - - 8438 90 90), which is also preceded by triple dash, follows the heading 'Parts:' (-8438 90) having single dash.

Since the item 'Tea leaf rolling and cutting machine' falling under tariff sub-heading is undisputedly a complete machine that falls under the tariff heading 'Other machinery', it cannot be classified as the 'Parts:' of 'Of other machinery'. Thus the decision of the ld adjudicating Commissioner holding the said machine as part is patently incorrect.

(vii) The appellant states that the subject SCN was issued on 21-07-2010, demanding Central Excise Duty for the period from 2006-07 to 2008-09, by invoking longer period of limitation. The appellant filed the Monthly ER-3/ ER-1 Returns regularly, depicting classification under CETSH No.8438 80 40. EA-2000 Audit was also routinely conducted, but no dispute was raised for three years after 2008-09 concerning classification or exemption.

3. They rely on the case law of **Collector of Customs, Madras Vs. T. I. Diamond Chain Ltd.-1997 (89) E. L. T. 804 (Tribunal)** in which the Tribunal has held as under:-

> ***10.*** *That it is above type of machine is clear from the catalogue and merely because it is versatile and could be adapted for making other similar items will not take it out of the Sr. No. 12 of the exemption notification. The respondents have drawn attention towards a number of tribunal orders and judgments but we need not go into the details thereof in view of the clear position evident from the catalogue and the settled position in law that merely because the machine was*

> *capable of some additional functions as well it could not be deprived of the benefit of an exemption notification which was otherwise applicable. [Emphasis supplied]*

4. One of the Appellant, M/s Vikram India Ltd. has submitted copy of the letter issued by Tea Board on January 3, 2008 specifying that Tea Leaf Cutting and Rolling Machines falls under Tariff Item No. 8438 80 40. The Tea Board vide their letter dated 28 April 2008 have issued a letter stating that Rotorvane and CTC Machines are used only or *"Tea Leaf rolling and cutting purpose in tea processing unit".* The Appellant has enclosed a Chartered Engineer's Certificate dated 15/05/2014, wherein the Engineer has specified that Rotorvane and CTC Machine is used for Tea Rolling & cutting purpose.

5. In respect of all other Appellants also the submissions were made on similar lines in respect of both merits as well as on account of limitation.

6. The Learned AR reiterated the findings of the lower authority and justified the confirmed demands.

7. Heard both sides and perused the Appeal papers, written submissions and all other documentary evidence placed before us.

8. The issue to be resolved is as to whether the CTC (Leaf Cutting Machine) would be classifiable under CET 84388040 (as contended by the Appellants) or under 84389090 as viewed by the Department for confirming the demands. Notification No. 6/2002, as amended by Notification No. 06/2006 dated 01/03/2006, exempts various goods which are given in the Table annexed to this Notification. Under Sl No. 10, the machineries/equipments which fall under Chapter 84 or 85 and are annexed to List 32A are fully exempted from payment of Excise Duty.

9. On going through the List 32A, it is observed that under **Sl No. (iv) "Tea Leaf Cutting-Rolling Machine"** falling under

Tariff item **"84388040**" would be eligible for full duty exemption. Therefore, it would be important to go through the CET Heading provisions, which are extracted below:-

Tariff Item	Description of goods
8438	Machinery, not specified or included elsewhere in this Chapter, for the industrial preparation or manufacture of food or drink, other than machinery for the extraction or preparation of animal or flxed vegetable fats or oils
8438 80	- ***Other machinery**:*
8438 80 10	- - - Auxiliary equipment for extrusion cooking plant
8438 80 20	- - - For production of soya milk or other soya products (other than soya oil)
8438 80 30	- - - Diffusing machines (diffusers)
8438 80 40	**- - - Tea leaf rolling and cutting machine**
8438 80 90	- - - Other
8438 90	**- *Parts:***
8438 90 10	- - - Of sugar manufacturing machinery
8438 90 90	**- - - Of other machinery**

10. From the above Table, it can be seen that under the Sub-Heading 8438 80 which pertains to *"Other machinery" (-), and "Tea Leaf rolling and cutting machine (---)"* is specified under 8438 80 40. Thus under (---) there is a direct entry for the *"CTC Machinery"* being manufactured by the Appellants herein. In the same Table under the main Heading of "Parts" (-) falling under "8438 90", under the Sub-heading "8438 90 90" (---), the items specified are *"of other machinery"*. This makes it clear that the entry 8438 90 90 is applicable only for the *"parts of other machinery"* and not for any other *"machinery"* per se. Therefore, the Revenue is in gross error in taking the view that CET 8438 90 90 is in respect of CTC machinery per se. Based on the erroneous premise, the demands have been confirmed for the CTC Machinery cleared by the Appellants. Therefore, on this count itself, we hold that the confirmed demands are not legally sustainable. Hence, we set aside the demands on merits.

11. So far as the Adjudicating Authority's finding that the Machineries in question are capable of undertaking some more

functions or they are versatile machines capable of multiple functions, we do not find any merits in this view. When there is a specific entry in respect of *"Tea leaf rolling and cutting machine"* under 8438 80 40, this entry is to be preferred over any other general entry which even otherwise does not pertain to *"Machinery"* per se as discussed above. In this case, the CET applied by Revenue pertains to *"Parts of Machinery"*. The Department does not dispute that the primary functions of the Machinery in question is that of Tea Leaf Cutting for which there is a direct Tariff Heading under 8438 80 40. Therefore, even on this count, we hold that the Revenue is in error in confirming the demands.

12. As submitted by the Appellants, for many years, all the Appellants have been classifying the machinery, under CET 843840 and they have been filing the Monthly Returns accordingly. In many cases, exports have taken place wherein the ARE-1 and Shipping Bills have indicated this CET as 8438 80 40 for the machinery exported. No objection whatsoever was raised by the Central Excise/Customs officials at any point of time. All these years, the Appellants were getting the exemption in terms of Notification No. 06/2002 as amended by 06/2006-CE dated 01/03/2006. In such a case, when the Department is fully aware of the classification adopted by the Appellants and when no query was raised, the question of suppression on the part of the Appellants would not arise. Therefore, we hold that the Department has not brought any evidence to indicate that the Appellants have engaged in any suppression.

13. We find that in the case of T. I. Diamond supra, it has been held that just because the machine was capable of some additional functions, it could not be deprived of the benefit of exemption notification. In this case, a matter of fact, the Department has failed to bring in any evidence to the effect that the CTC machine was capable of multiple functions. The letter issued by Tea Board and the Chartered Engineer confirms that the CC machine is used for Cutting Tea Leaves only. The Department has not rebutted these letters with

any cogent documentary evidence. Accordingly, we hold that the confirmed demand for the extended period is not legally sustainable. Therefore, we set aside the confirmed demand in respect of the extended period even on account of time limit.

14. Thus all the Appeals stand allowed both on merits as well as on account of limitation. The Appellants would be eligible for consequential relief, if any, as per law.

(Operative part of the order was pronounced in the open court.)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Pooja