

Central Excise - Classification - par boiling machine falls under heading 84.19 - CESTAT Larger Bench

By TIOL News Service

CHANDIGARH, NOV 02, 2011 THIS Larger Bench has been constituted by the President of CESTAT as per the directions of the Supreme Court in Civil Appeal No. 861 of 2011 in the case of *Jyoti Sales Corporation versus Commissioner of Central Excise, Panchkula*. The Apex Court noted that there is a conflict in judicial opinion expressed by two coordinate benches of the Customs, Excise and Service Tax Appellate Tribunal. One line of decisions rendered by the Tribunal holds that par boiling machine and dryer manufactured by the assesses are classifiable under chapter heading 84.37 of Central Excise Tariff while the other line of decisions takes the view that such machines are classifiable under chapter heading 84.19. This Larger Bench of CESTAT has been constituted to resolve this conflict and to decide the appropriate classification of the par boiling machine and dryer.

In the case of *Jyoti Sales Corporation versus Commissioner of Central Excise, Panchkula* reported in [2011-TIOL-1498-CESTAT-DEL](#) /par-boiling machine and dryer were classified under 8419 of Central Excise Tariff. On the other hand, in the case of *SKF Boilers and Driers Private Limited versus Commissioner of Central Excise, Mangalore* reported in 2011 (264) E.L.T. 425 (Tri. - Bang.) , the classification of the same machines were ordered under 84.19.

The two competing Tariff Headings are:

8419

: Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilising, pasteurising, steaming, drying, evaporating, vaporising, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, non-electric.

8437

: Machines for cleaning, sorting or 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

The Larger Bench findings:

The par boiling machine as well as drier are used for steaming and drying paddy and also for reducing the moisture content in it. The processed Paddy is then sent to subsequent sections where de-husking, hulling, milling and polishing are undertaken. Briefly the par boiling process involves 3 stages, viz. Pre-soaking, soaking and steaming. In the 1st stage, clean paddy is steamed for 3 to 5 minutes. In the 2nd stage, pre-steamed paddy is soaked in water tanks for about 4 to 5 hours. In the last stage, the soaked paddy is passed through steaming process for 3 to 5 minutes. Subsequently the steamed rice is dried in a drier which is also normally supplied along with par boiling rice machinery.

From the processes outlined in the above paragraph, it is fairly clear that par boiling is a process which is used in the rice milling industry. The heading 8437 covers machinery used in the rice milling industry. If we were to look at rice mill, it will have different types of machineries. The input to this process flow would be the raw paddy and the final output from the rice mill will be the polished rice. The par boiling machinery could be part of a rice mill or stand alone and in either case the final output will be parboiled polished rice. Hence if we were to look at an entire rice mill including the par boiling machine, there is no doubt that the machine would be part of the rice mill. However in the different cases which have come up before the tribunal, we are dealing with the situation in which a factory manufactures par boiling machine and the drier which goes with it. The question before us is the correct classification of the machine as it is cleared from the factory. When we look at the function performed by the par boiling machine and the drier, it is too far-fetched to take the view that it is a machine to produce milled rice.

When we look closely only at the function performed by the par boiling machine, we find that it functions independent of the rice milling process. It has a specific function which involves the 3 stages namely pre-steaming, soaking and steaming followed by drying. When we look to see where such machines are classified, we are led to the heading 8419. This heading covers machinery or plant, whether or not electrically heated, for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilising, raster pasteurising, steaming, drying etc. We do find that the functions performed by the par boiling machine and dryer are squarely covered in this heading 8419.

It has been argued that 8419 excludes grain dampening machines whose classification is indicated as 8437. It has further been argued that the process undertaken in the making of parboiled rice is akin to grain dampening machines. We are not persuaded by this argument. The process carried out in the par boiling machine is far more than grain dampening. It involves not only soaking but also steaming and drying. Clearly such a machine cannot be described as grain dampening machine.

When we look at the two clarifications issued by the Board dated 19.5.2010 and the subsequent clarification dated 15.5.2014, we find that initially the Board had suggested classification of the par boiling machine under 8437 considering it as a part of rice milling machinery. However, subsequent to the decision of the Tribunal in the Jyoti Sales Corporation case, in which the classification of such machines were made under 8419, the Board has revised its guideline and has suggested classification of such machines under 8419. In any case we are of the view that this is the classification which would be most appropriate for par boiling machines and/or driers manufactured and cleared from a factory.

It has been laboriously argued before us that reference should be made to note 3 to Section XVI as well as note to 2 chapter 84 to decide the classification. It has also been argued that the par boiling machine and drier are fitted to the other machines which are used in a rice mill and the entire bank of interconnected machines function as a composite machine rendering the function of milling the rice. Accordingly it has been argued that par boiling machine would be classifiable as part of such a rice mill under CETH 8437. We find such an argument is misdirected. Admittedly heading 8419 is a heading specific to the functions performed by a particular heading. The same does not refer to the industry specific machine, but is relatable to function specific machines. If the classification is to be adopted, as contested by the assessee, on the basis of industry specific (like in the present case rice industry) than the machines which stand specifically covered under the said heading 84.19, would get shifted to the other heading dependent upon the industry in which they are to be used, thus making the said entry as redundant and frivolous. It is well settled principle of law that an interpretation which renders an entry otiose has to be avoided. As such, when viewed from this angle also, we get affirmed in our opinion of the par-boiling machine failing under heading 84.19.

Further, in terms of the well settled principle of interpretation, an item is required to be assessed, in the form, in which the same is cleared from the manufacturers factory and not on the basis of its future use, after clearance, unless it is the requirement of the entry. As such, we note that the par-boiling machine, when examined and assessed independently satisfies all the specification of heading 84.19, thus making it compulsorily to fall under heading 84.19.

(See [2016-TIOL-2848-CESTAT-CHD-LB](#))