

Amco Batteries Vs. Commr. of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Nov-11-1996

Reported in : (1997)(93)ELT441Tri(Chennai)

Appellant : Amco Batteries

Respondent : Commr. of C. Ex.

Judgement :

1. The issue in the appeal relates to benefit of notification no.

68/86, dated 10-2-1986 whereby the stationary batteries are exempted from payment of duty.

2. The appellants were clearing the stationary batteries without filling in the electrolyte thereunder and were supplying the electrolyte separately which is adequate for filling the same in the battery. Since the battery was supplied separately, the benefit of notification has not been allowed by the learned lower authority in respect of the same and the benefit of the notification has been restricted only to the battery without the electrolyte filled thereunder.

3. The learned Counsel has urged that electrolyte was sent separately alongwith the battery for the convenience of transport and to avoid any risk of spillage of the highly corrosive and hazardous chemicals which make the electrolyte. He has urged that at the site the electrolyte is filled in by the customer. He has pleaded that the appellants had invoiced both the electrolytes and the battery together and

had not raised separate charges for the electrolyte. Order placed by the customers was only for the supply of batteries with electrolytes. He has therefore pleaded that two items moving together namely, battery and electrolyte should have been treated as one entity for the purpose of notification. The learned lower authority he has pleaded has denied the benefit of the notification only on the ground that the goods in question had a separate identity and which has shelf life and they were not transient in nature and therefore the same were required to be treated separately from the battery when cleared as such alongwith the battery. He in this connection, has referred us to the interpretative rules for interpretation of the tariff and has urged that either rule 2(a) or 2(b) of the Interpretative Rules will be applicable to the facts of this case.

4. The learned SDR pleads that the goods are to be assessed in the form in which these are cleared from the factory. The very fact that the battery and the electrolyte as it is are cleared separately for the purpose of assessment therefore the same have to be individually assessed on merits. In the present case, the two items namely, battery without electrolyte and electrolyte are known in the market as separate items and therefore this should be treated on that basis for assessment separately.

5. We have considered the pleas made by both sides. We observe that there is no dispute that the electrolyte in question is required to be filled in the battery. The plea of the appellants that the electrolyte supplied was for filling in the battery is not controverted. The question therefore that falls for consideration is whether in such a circumstance the battery and the electrolyte can be treated as one entity for excise purposes. There cannot be any dispute that in case the electrolyte had been filled in the battery, the battery with the electrolyte filled in would have been extended the benefit of the notification. Therefore, the question that would arise is in case this electrolyte is. for reason of transport supplied separately while it is intended to be filled in the battery, the excise levy has to be charged treating the two items together or separately. The appellants it has been urged invoiced the two items together and the price charged for the battery also [includes] the cost of electrolyte. We observe that rule 2(a) of the Interpretative Rule provides for the clearance of the goods in unassembled or disassembled condition also. This rule

we find has not been referred to by the learned lower authority while arriving at the conclusions. The battery consists of the plates and terminals fixed in a container and in which the electrolyte is filled. Therefore, essentially when the battery has been formed the two components which remain to make the battery functional are the battery portion which has been formed by joining the terminals, the plates and the container together into one entity and the electrolyte which can be supplied separately. Therefore, the issue that would be required to be examined is whether in the context of the battery rule 2(a) can come into play.

This being a legal point and since it would require to be examined in the light of the scope of rule 2(a) of the scheme of the tariff and also the scope of the entries as set out in the notification and since it has not been done, we are of the view that the matter will have to be examined afresh. We therefore hold that since the learned lower authority had not examined the issue in depth, the order cannot be said to be a proper order. In this view, we set aside the impugned order and remand the matter to the learned lower authority for de novo adjudication. The appeal is thus allowed by way of remand.

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