Collr. of Cus. Vs. Eastern Stores and Trading Co.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-28-1996

Reported in : (1997)(90)ELT326TriDel

Appellant : Collr. of Cus.

Respondent : Eastern Stores and Trading Co.

Judgement :
1. This Revenue appeal is directed against order-in-appeal dated 7-7-1988 of Collector of Customs (Appeals).

2. The respondent imported a consignment of Navigational Lights. The goods were assessed under CTH 8512.20. The respondent filed a refund claim before the Assistant Collector of Customs on the ground that the goods are assessable under CTH 85.30. Assistant Collector of Customs rejected the claim. Collector (Appeals) held that these Navigational Lights are in various colours for flashing signals to ships around and port installations for the sole purpose of safety warnings for prevention of collisions. He therefore, set aside the order and allowed assessment under CTH 85.30. In the Revenue appeal, revenue claimed that the goods are properly classifiable under 8431.80 as Electric sound or visual signalling apparatus.

2. Ld. DR reiterated the Departmental argument submits that these are used in ships and therefore, they are not covered under CTH 85.30 and would be more appropriately classifiable under 8531.80. He however concedes that this claim was

not pressed before Collector (Appeals) by them and this is a new claim at this stage.

3 Ld. Advocate for the respondent submits that these Navigational Lights are used for guiding ships for safety purpose to prevent collisions.

4. We have heard both sides and perused the records of the case. In the first place, we find that the claim for classification under 8531.80 was not made before Collector (Appeals). Collector (Appeals) therefore, did not go into this claim and decided only against two completing entries 85.30 and 85.12. Revenue therefore, can not at this stage raise a different ground in appeal. If they had wished to contest the Assistant Collector's order they ought to have filed an appeal against that order before Collector of Customs (Appeals). In the second place, we find that the Collector (Appeals) has stated as follows : - "The appellants in their appeal memorandum have stated that they had submitted catalogue and the reasoning with their explanation which are also submitted with appeal papers. The Navigation Lights in question meet the standard of Convention on the international regulations for preventing collisions at Sea, 1972 of Inter-Governmental Meritime Consultative Organisation (IMCO). They are in various colours to flash signals to ships around and port installations for the sole purpose of safety warnings for prevention of collisions and they are not common ordinary lighting. They would, therefore, definitely fall under Heading 85.30 of Customs Tariff Act, 1975" From the Collector (Appeals) order and it appears that the impugned goods are used to flash signals to ships around and port installations for the sole purpose of safety warnings for prevention of collisions.

5. Since Revenue did not file appeal (sic) their claim at this stage cannot be entertained. In view of this, Revenue appeal is rejected and impugned order upheld.