

Cc Vs. Toshniwal Bros.

Cc Vs. Toshniwal Bros.

SooperKanoon Citation : sooperkanoon.com/10608

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-09-1997

Reported in : (1997)(72)LC235Tri(Mum.)bai

Judge : R T Lajja, S Kang

Appellant : Cc

Respondent : Toshniwal Bros.

Judgement :

1. In this appeal filed by the Revenue, the matter relates to the applicability of exemption notification No. 65/88-Cus. dated 1.3.1988 to the goods imported-- Transvaginal probe 5MHZ, TV 13 RO50. In the invoice the goods had been described as accessory for the ultrasound scanner, ultra sonography-SDL 300. The importers M/s Toshniwal Bros.

Bombay Pvt. Ltd. claimed the classification of the goods under heading No. 9018.30 with the benefit of exemption notification No. 65/88-Cus.

the benefit of notification No. 65/88-Cus. was denied by the Assistant Collector of Customs. On an appeal the collector of Customs (Appeals) Bombay held that the goods were essential for the functioning of scanners/sonograph. He further observed that the selection of the kind of the probe will depend on the medical specialist who was to utilise the equipment.

2. Heard Shri S.N. Ojha, JDR for the appellant Revenue and Shri M.L.

Seal authorised representative for the respondent. We have gone through the facts on record and the technical literature produced by the respondents.

3. The only issue for our reconsideration in this appeal by the Revenue is whether the goods imported were covered by the description Ultra sonograph as mentioned at S. No. 105 of the table annexed to notification No. 65/88-Cus. Under that notification the medical equipment as accessory and spare parts which were falling under Chapters 84, 85, 90 and 94 or 98 of the first schedule to the Customs Tariff Act, 1975 and were specified in the table annexed to that notification enjoyed concessional rate of customs duty. As we have mentioned above at S. No. 105 of the table Ultra sonograph is included.

The goods imported were the accessories of Ultra sonograph. Shri M.L.

Seal contended that the accessories of Ultra sonograph were covered within the expression of Ultra sonograph. It was his contention that even when accessories were not specifically mentioned, they were eligible for the exemption as the notification provides exemption to the medical equipment which were accessories and spare parts. On the other hand Shri S.N. Ojha, SDR submits that only those accessories and spare parts are covered within the scheme of exemption which had been specified in the table annexed to that notification and that the scope of the exemption could not be extended and that the exemption notification had to be construed strictly. The representative of the respondents had given a sketch with details of the ultra sonograph.

From the write up, we find that the goods imported do not figure in any of the parts listed for the ultra sonograph. It is mentioned that for further versatility a wide variety of options are available. When the exemption is provided to Ultra sonograph it is for consideration whether all the options for further versatility of the product will also be eligible for the said exemption, even when there is no mention of such options in the scheme of the exemption.

4. We consider that as the exemption had been provided only to the ultra sonograph, the benefit of exemption could not be available to the wide variety of the options which are for further versatility of the goods so specified. It is stated as

under: Eight wide variety of options for further versatility Treck ball, 12 inch TV monitor, physiological signals and many other options will further enhance the versatility of the SDL 300.

5. In the optional manual of transvaginal probe, it is stated that the probe was used by connected with SDL 300. This probe projects ultra sound energy through vagina of patient to obtain an image of uterus, follicle or foetus. This also indicates that the ultrasonograph is complete without such a probe.

6. The Collector of Customs (Appeals) had discussed that probes were optional but any kind or probe was essential for operating the sonograph/scanner. He has not discussed as to how the particular probe in question would be covered within the expression ultrasonograph. He has further mentioned that the probe in question was for use by the Gynecologist. Taking note of the express provision in the notification, we do not agree with his finding that depending upon the medical specialist any probe would be an essential part of the scanner/sonograph.

7. Ld. SDR has referred to the Supreme Court decision in the case of Rajasthan Spinning and Weaving Mills v. CCE Jaipur .

Lastly, it is for the assessee to establish that the goods manufactured by him come within the ambit of the exemption notification. Since it is a case of exemption from duty, there is no question of any liberal contraction to extend the term and the scope of the exemption notification. Such exemption notification must be strictly construed and the assessee should bring himself squarely within the ambit of the notification. No extended meaning can be given to; the exempted item to enlarge the scope of exemption granted by the notification.

9. We considered that the view taken by the Id. Collector of Customs (Appeals) that depending upon the medical specialists any probe could be considered as essential for ultra sonograph was not correct. Taking all the relevant facts and considerations into mind, we do not agree with the finding of the Id. Collector of Customs (Appeals), Bombay. As a result the appeal filed by the Revenue is allowed.