Electronic and Engineering Co. Vs. Commissioner of Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-03-1997

Reported in : (1997)(92)ELT382TriDel

Appellant : Electronic and Engineering Co.

Respondent : Commissioner of Cus.

Judgement :

1. The appellants imported Nickel Cadmium Battery Cells describing them in the Bill of Entry as Cathode Ray Tube and Sockets being components used for ultrasonic flow detectors. The goods were cleared on payment of duty under Heading 8506.19. Subsequently, importers filed in refund claim holding that the goods being parts of the ultrasonic flow detector mentioned at Serial No. 10 of Notification No. 97/89-Cus., concessional rate of duty applied. The Assistant Collector rejected the claim holding that battery cells were not parts but consumables. The Collector appeals upheld the lower order. Hence this appeal.

2. The case for the appellants was argued by Shri S.S. Gupta, Chartered Accountant. Revenue was represented by Shri K.K. Jha, Senior Departmental Representative.

3. Shri Gupta stated that there is no definition of "parts" in the Tariff referring to the CEGAT order in the case of Electrosteel Castings Ltd.-v. Collector of Central Excise, reported in 1989 (43) E.L.T. 305 (Tribunal) he stated that a component, whose absence will disable a machine or appliance, must be regarded as an

essential part of that machine. He also referred to the distinction made by the Tribunal between the "parts" and "accessories" in the judgment in the case "of Grindwell Norton Ltd., Bangalore v. Collector of Customs, Madras, reported in 1986 (24) E.L.T. 426 (Tribunal). He stressed that the battery was essential for performance of the basic functions of a flow meter and was not an accessory which would add to the beauty, convenience or effectiveness of something else. Referring to the judgment of the Bombay High Court in the case of Precision Rubber Industries v. Collector of Central Excise, reported in 1990 (49) E.L.T.170 (Bom.), he claimed that in this judgment it has been brought out that component is an essential element of a machine whereas the accessory is an aid to the machine. The machine could not function without the battery and was, therefore, an essential part qualifying for the benefit of the notification. Citing the judgment of the Tribunal in the case of Kerala State Electronics Development Corporation Ltd. v. Collector of Central Excise, Cochin, reported in 1994 (71) E.L.T. 508 (Tribunal). Shri Gupta stated that in this judgment batteries are held to be an essential part of the UPS System.

4. Shri Jha in support of the Collector's order referred to the judgment of the Bombay High Court in the case of Wipro Products Ltd. v.Union of India and Ors., reported in 1986 (25) E.L.T. 485 (Bom.) wherein diskettes (Floppy disks) were held to be not parts or accessories of computers. Referring to the judgment of the Bombay High Court in the case of Koron Business Systems Ltd. v. Union of India, reported in 1991 (51) E.L.T. 212 (Bom.), he argued that where certain accessories could be purchased separately by the customers as per their needs, they did not become essential parts of the machine. He stated that in the case of Wipro Infotech Ltd. v. Collector of Central Excise, Bangalore, reported in 1994 (69) E.L.T. 82 (Tribunal), the Tribunal held that a ribbon used in a computer printer was an accessory and was not an inputs quantifying under the Modvat. In the case of Masters Medical Equipment v. Collector of Customs, New Delhi, reported in 1995 (80) E.L.T. 101 (Tribunal), the Tribunal had held that Multi-Image Cassettes were not parts of Multi Image Camera. Using the same logic, he argued that batteries did not become parts of the flow meter. He also referred to the Supreme Court judgment in the case of State of Uttar Pradesh and Anr. v. Kores (India) Ltd., reported in AIR 1977 Supreme Court 132 in which it was held that Typewriter

ribbon was an accessory and not the part of the typewriter.

5. We have carefully considered the submissions made and the judgments cited. Primary cells and primary batteries are specifically covered under heading 8506. In terms of Rule (1) of the General Rules for the Interpretation of the Tariff, classification is to be determined according to the terms of the heading which is very clear and unambiguous in the present case. There is no Chapter Note or Section Note qualifying the common meaning to be derived on perusal of the heading. Therefore, under the tariff electric batteries are to be treated as articles by themselves and not parts of any other machine.

6. Whether batteries are parts of any machine have not been dealt with in any of the judgments cited by both the sides. In their judgment in the case of Patel Plastics v. Union of India, reported in 1992 (59) E.L.T. 247 (Guj.), the Gujarat High Court in dealing with the classification of parts of battery cells have doubted whether primary cells of batteries could be said to be parts of the machines. While Shri Gupta had dealt on general aspects, the citations made by Shri Jha are specific. The judgment of the Supreme Court is most relevant. In dealing with the questions whether a typewriter ribbon is a part of the typewriter, citing with approval the Mysore High Court decision in the case of Mysore in State of Mysore v. Kores (India) Ltd., Apex Court has held : "Regarding ribbon also to which the above-mentioned rule of construction equally applies, we have no manner of doubt that it is an accessory and not a part of the typewriter (unlike spool) though it may not be possible to use the latter without the former. Just as aviation petrol is not a part of the aeroplane nor diesel is a part of a bus, in the same way, ribbon is not a part of the typewriter though it may not be possible to type out any matter without it." In the other cited cases also cassettes and diskettes were accessories without which the cameras and the computers could not be made fully operational. Even then the Tribunal had rejected the claim that they were parts of the machines. The judgment of the Tribunal in the case of Kerala State Electronics Development Corporation Ltd. v. Collector of Central Excise, Cochin (supra), is not relevant here because in that case the goods were UPS System, the very soul of which was a battery.

It is also not denied here that although the batteries enjoy a long life they could be purchased separately by the customer. The ratio of the Koron Business Systems Ltd. v. Union of India (supra) is, therefore, squarely applicable.Jayshree Industries v. Collector of Central Excise, reported in 1993 (63) E.L.T. 492 (Tribunal) is not relevant here as it pertains to the rules relating to Modvat - whether the credit of duty paid on all inputs is available irrespective of whether the inputs are essential parts or accessories or even embellishments.

8. On perusal on the facts of the case and of the case law, we hold that the battery cannot be called to be a part of the flow meters and that the benefit of the notification is not applicable.

9. The appellants have contested the Collectors, observation that the batteries are "consumables" and, therefore, not "parts". We do not consider it necessary to go into this issue as it is not relevant to our analysis.

10. On the analysis, we find no merit in the appeal and dismiss the same.