Orient Engineers Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-03-1997

Reported in : (1997)(91)ELT332TriDel

Appellant : Orient Engineers

Respondent : Collector of Customs

Judgement :

1. his appeal is directed against the order-in-original dated 29-3-1990 of Collector of Customs, Calcutta.

2. The point at issue in this appeal is whether the impugned goods are Electrical Automatically Controlling Instruments which are exempted from the payment of Auxiliary Duty under Notification No. 105/89-Cus.

The impugned goods were assessed under CTH 9032.89 read with Notification No. 69/86-Cus. The appellants filed refund claim claiming exemption of auxiliary duty on the ground that the impugned goods which are described as Precipitator were voltage regulators which were exempted from the auxiliary duty vide Sl. No. 37 of the Notification No. 105/89-Cus., dated 1-3-1989.

3. Arguing for the appellants the learned Advocate submits that the goods were examined by the Customs authorities who recorded that these were automatic voltage controller and therefore, Collector (Appeals) order holding that since the goods have left the Customs charge these could not be correlate with literature,

"Operational Manual", submitted were not sustainable.

4. The learned DR submits that this claim ought to have been made while the goods were still in Customs charge. He however concedes examination report indicate that these are automatic voltage controlling instruments.

5. We have heard both sides. The Collector (Appeals) has held that the goods have left the Customs charge and therefore, identity of the impugned goods cannot be established as an "Electrical Automatically Controlling Instruments or Apparatus" with reference to literature as well as Bill of Entry, Invoice for an earlier consignment submitted by them. Copy of the Bill of Entry at page 18 of the appeal memo on the reverse contain examination report by the Customs Appraiser. It indicates that "the goods are specially marketed as "automatic voltage controls". Notification No. 105/89 at Sl. No. 37 of the table annexed thereto exempts "electric measuring, checking, analysing or automatic controlling instruments and apparatus". Notification also explains the scope of electric measuring, checking, analysing or automatic controlling instruments or apparatus. Under para 6(d) of explanation to this Notification, instruments automatically regulating electrical quantities are indicated as falling under the category of electric measuring, checking, analysing or automatically controlling instruments. Since the examination report itself indicates that the goods are automatic voltage controls, the fact that they have left the Customs charge is not material. Since the examination report itself indicates that the goods are voltage controllers these would be covered in terms of Explanation 6 of the Notification No. 105/89-Cus. as automatically controlling instruments and apparatus which automatically regulates electric quantities.

6. In view of this, we hold that, considering the report of the examination conducted by the Customs authorities themselves, the goods would be eligible for exemption of auxiliary duty under Notification No. 105/89. We therefore, set aside the impugned order and allow the appeal.