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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-31-1997

Reported in : (1997)(71)LC616Tri(Delhi)

Judge : S Peeran, K D Shiben

Appellant : Ravindra Tubes Ltd.

Respondent : Cc

Judgement :

1. This appeal is directed against order in appeal dt. 26.2.1991 of Collector of Customs (Appeals). The appellants imported Oscillator Valves. These were classified under CTH 85.11(1) as parts of welding machines. Subsequently it was, however, found that these parts were specifically covered under 85.18/26 as electronic valves and therefore, a demand for differential duty was issued.

2. Arguing for the appellants, Id. Advocate submits that Assistant Commissioner held against them on the ground that in order to be eligible to concession under Notification 179/80, the parts must not be thermionic valves. He therefore, confirms the duty against them on the ground that these are Oscillator valves and they are excluded under Notification No. 179/80. He submits that it is true that thermionic valves are excluded from the benefit of this Notification but they were specified as excluded parts only vide Notification No. 42/Cus. In their case, the impugned goods were imported in 1981 and therefore, they would not be hit by this Notification.

3. Arguing for the Revenue, Id. DR fairly concedes that at the material time, thermionic valves were not excluded under Notification No. 179/80 and therefore, they would be eligible to benefit of this Notification.

4. We have heard both sides. There is no dispute about classification.

On perusal of the Bill of Entry, it is seen that goods were classified under heading 85.18/27 read with 85.11(1). The only dispute is regarding benefit of Notification No. 179/80. Ld. Advocate drew our attention to Notification No. 42/Cus. dt. 28.2.1982 placed in the paper book. This notification, while referring to parts excludes diodes, thermionic valves, transistors, similar semi-conductor devices etc. The Bill of Entry indicates that goods were imported on 20.6.1981.

Notification No. 179/80 dt. 4.9.1980 indicates that this Notification exempts parts required for the purpose of initial setting up or for the assembly or manufacture, or any article falling under among others under 85.11(1). Both sides agree that the dispute is only in regard to classification of finished product. In fact Id. Advocate draws our attention to letter dt. 1.5.1981 from Directorate General of Technical Development which certified that Oscillator Valves among others were required for manufacture of High Frequency Welding Plant. Since the exclusion clause was not present in the notification at the relevant time when the impugned goods were imported, the disability would not be attached to the goods and these would be covered by benefit of Notification 179/80 at the material time when impugned goods were imported.

5. In view of this, we set aside the impugned order and allow the appeal.

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