

**Cc Vs. Systems and Components**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

**Decided On :** Apr-15-1997

**Reported in :** (1997)(71)LC241Tri(Chennai)

**Judge :** V Gulati, Vice-

**Appellant :** Cc

**Respondent :** Systems and Components

**Judgement :**

1. This reference application arises out of the order of the Tribunal bearing No. 873/95 dated 10.1.1996. This reference application was earlier heard and the orders were reserved. The draft order dictated could not materialise into a regular order in as much as the steno concerned, after his prolonged absence was reverted back to his parent department. Accordingly, therefore, the matter was re-listed for hearing afresh.

2. The issue decided by the Tribunal was in the context of the entry in the Import and Export Policy relating to rechargeable cells and dry batteries all types. The appellants have imported batteries rechargeable and is comprised of a number of cells. The issue posed before the Tribunal was whether against the description rechargeable cells a battery comprising of rechargeable cells could be imported and there is no dispute that the goods are wet batteries and not batteries. The Tribunal took note of the reasoning of the learned lower authority in the order impugned before the Tribunal and dismissed the appeal of the Revenue holding that the reasoning given was acceptable. The learned lower appellate authority discussing the scope of the entries has held as under: 9. Thus, it would appear that the word 'battery' and 'Cell' are often used as conveying the same meaning.

primary batteries' and 'secondary batteries'. Primary batteries are generally considered as dry batteries which are capable of only single use while secondary batteries can be used repetitively by way of recharging. Hence the secondary battery is generally known as rechargeable cells.

11. Once we accept the proposition that the rechargeable cells and dry batteries are mutually exclusive, it is incumbent on us to find the meaning of rechargeable cells. I find from the original order that the Lower Authority has made a distinction "rechargeable cells" and "batteries". The Licence covers "rechargeable cells" and not "rechargeable battery" and what the appellants have imported are batteries only which are rechargeable. The Lower Authority has therefore held that the licence did not cover the goods. I am not in agreement with the above reasoning. It has been emphatically submitted by the appellant that the rechargeable cells without battery cabinet cannot be marketed. The words "rechargeable cells" denote only "rechargeable batteries". What has been imported by the Appellant are nothing but rechargeable batteries containing rechargeable cells and hence their goods were covered by the licence. I find considerable force in the above reasoning. On the other hand, the Lower Authority has gone at a tangent by dwelling on the question whether the batteries imported could be considered as dry. It was actually nobody's case that the batteries imported were dry batteries or the batteries imported were not rechargeable. The goods were described in the invoice as rechargeable cells/batteries.

3. The point of law referred to by the learned Collector in this regard is as under: M/s. Systems and Components, Bangalore imported sealed lead acid batteries which are nothing but wet batteries and sought clearance against special import licence SI. No. 30 of Special Import Licence reads as "rechargeable cells and dry batteries all types." If the idea is to allow all cells and all batteries, or if cell and battery are same, differentiation of these two will not figure in the wording of Serial No. 30 of Special Import Licence.

4. The learned SDR for the Department has urged for the reference of the following question of law: As to whether the wet sealed lead acid batteries imported by the appellants could be imported against the Special Import Licence which had been issued for the importation of rechargeable cells and dry batteries all types.

He has pleaded, technically battery and cell are two different items and has pleaded that against the description rechargeable cells only cells as such could have been imported and not the batteries comprising of a number of cells. He has pleaded the item imported is wet lead acid batteries. In this connection he has urged as under: 1. Whether the findings of the Tribunal that cell and battery conveys the same meaning and that in common parlance one is synonymous with the other is a correct one as arrived at in para 8 and 9 of the Tribunal Order. This findings of the Tribunal appears to be arrived at without proper appreciation of the "cell" and "battery" both in usage as well as by scientific, and technological standards in as much as "cell" refers to one individual self contained unit as biological cell in human body, prison cell etc.

whereas "Battery" refers to a group or conglomeration of such individual entities. Even in HSN Explanatory Notes under 85.06 and 85.07 in page 1452 it has been mentioned that "cells may be grouped together in batteries, either in series or parallel or a combination of both" and again in page 1454 it has been stated that "Accumulators consist of essentially of a container holding the electrolyte in which are immersed two electrodes fitted with terminals for connection to an external circuit. In many the containers may be sub-divided, each sub-divisions (cell) being an accumulator in itself, these cells are usually connected together in series to produce a higher voltage. A number of cells so connected is. called a battery".

Though cell and battery perform the same function, they are manufactured according to the parameter of power requirements namely low voltage/high voltage. Secondly, cells are used' only in portable devices whereas batteries are used in large devices- like railway carriages, transport vehicles, etc. The distinction between cell and battery is therefore apparant and has to be taken cognizance of to read that "rechargeable cells" as mentioned in SI. No. 30 of Appendix XXXV of the Import Trade Control Hand Book of Procedures 1992-97 is not applicable to "rechargeable batteries.

5. The learned Consultant for the respondents has pleaded that Custom House has been interpreting the policy in favour of the importers and allowing the importation of the batteries as imported against the description rechargeable cells and dry batteries all types. The learned SDR in reply has pleaded that the Custom House has done this in view of the Tribunal's order which has not been stayed in spite of an application having been filed in this regard. The Itemed Consultant has further pleaded that the term cell and battery should be read as synonymous and the purpose of importation was to allow usable materials as such and the respondents understood the scope of the term rechargeable cells as synonymous to the battery and therefore, imported the batteries as such. He has pleaded the issue involved relates to the interpretation of the scope of the term cell vis-a-vis the battery and no point of law can be said to arise in the context of the interpretation of the same. He pleads, if there is any doubt, the Department could have referred the matter to the DGFT for clarification.

6. We have considered the pleas of both the sides. We observe that the term battery and cell and storage battery and storage cell as defined in McGraw-Hill Dictionary as under: STORAGE BATTERY:- (Elec) A connected group of two or more storage cells or a single storage cell. Also known as accumulator; accumulator battery; rechargeable battery; secondary battery.

STORAGE CELL:- (Elec) An electrolytic Cell for generating electric energy, in which the cell after being discharged may be restored to a charged condition by sending a current through it in a direction opposite to

that of the discharging current. Also known as secondary cell.

7. The cell is a primary unit which goes to make a battery under the term cell and battery are separate recognised technical terms as representing separate entities having certain defined parameters. As seen from the above definition, while the storage battery could be a single storage cell also but a number of cells comprising a battery cannot pass the muster of a cell as per the definition given above. The issue involved before us, therefore, relates to the scope of the entry for importation purposes in terms of the description as given in the licence above. Since the interpretation of the scope of the entry arises, a question of law and fact can be said to arise. In the above view of the matter we hold that the question of law is to be referred.

8. We find in this case the relevant entry reads as "rechargeable cells and dry batteries all types". Therefore, the question is whether the battery imported by the appellants which contains rechargeable cells can be termed as rechargeable cells within the meaning of SI. No. 30 of Appendix XXXV of the said import licence. This in our view is a matter wherein the mixed question of law as well as facts are involved. In view of the above statement of facts as well as points involved as discussed above, we are of the view that a question of law does arise for reference to the Hon'ble High Court. In this view of the matter, we refer the following question of law to the Hon'ble High Court for their valuable advice in the above said matter: Whether in the facts and circumstances of the case the Tribunal was correct in holding that the lead acid battery which was imported by the appellant is covered by the said Import Licence of the Respondent 9. The Registry is directed to submit the above statement of facts along with the question of law to the Registrar, Hon'ble High Court of Madras for being placed before the Hon'ble High Court for their valued advice in the above said matter.

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