

Addon Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-17-1997

Reported in : (1997)(96)ELT592TriDel

Appellant : Addon

Respondent : Collector of Central Excise

Judgement :

1. Matter called. None for the appellant. There is, however, a letter from the appellant praying for decision on merits in their absence on the basis of their appeal memo. Accordingly we have heard Shri A.K.Agarwal, SDR and perused the records.

2. The controversy involved in the present matter is whether the electric horns manufactured by the assessee for use in the four wheeler and two wheeler motor vehicles are to be classified under Chapter 87 relating to motor vehicles or under Heading 85.12 which relates to electrical lighting or signalling equipment (excluding articles of Heading No. 85.39) windscreen wipers, defrosters and demisters of a kind used for cycles or motor vehicles. We observe that the lower appellate authority in arriving at his conclusion for classification of the product under tariff Heading 85.12 has placed reliance on page 1349 of Explanatory Notes to HSN which includes, inter alia, horns, sirens and other electrical sound signalling appliances. The lower appellate authority has further held that once the goods have been specifically covered by a specific heading there is no need to go by the general heading relating to parts of motor vehicle as contended by the

appellant herein. Hence the classification was decided by the lower appellate authority under tariff Heading 85.12.

3. On the other hand, the appeal memo contends that it is a motor vehicle part inasmuch as it is purchased only by persons using motor vehicles or it is stored for sale by dealers in motor vehicles parts.

For the purpose of classification the appellant relies on the Supreme Court judgment in the case of Atul Glass Pvt. Ltd. v. Collector of Central Excise - 1986 (25) E.L.T. 473 (S.C.), where the Apex Court has held - "The test commonly applied to ascertain whether a marketable product falls within a specific item in Schedule 1 to the Central Excises and Salt Act, 1944 is how the product identified by the class or section of people dealing with or using the product? It is generally by its functional character that the product is so identified. It is a matter of common experience that the identity of an article is associated with its primary functions. It is only logical that it should be so. When a consumer buys an article, he buys it because it performs a specific function for him. There is a mental association in the mind of the consumer between the article and the need it supplies in his life. It is the functional character of the article which identifies it in his mind." 4. It is on the aforesaid reasoning that the appellant has submitted that electric horns which are used in four wheeler and two wheeler automobiles should be classified under Chapter 87 relating to parts of motor vehicles.

5. Learned SDR Shri A.K. Agarwal, apart from reiterating the findings of the lower appellate authority also draws our attention to Section Note 2(f) of Section XVII. Under the section note articles falling under Chapter 85 are excluded from Section XVII in which Chapter 87 falls. He therefore submits that in view of the specific section note there is no doubt whatsoever that electric horns manufactured by the appellant would fall under tariff Heading 85.12.

6. We have carefully considered the pleas of both sides. We are in agreement with the submission of the Id. SDR that in view of specific Section Note 2(f) of Section XVII the goods (electric horns) involved herein would not fall under Chapter 87 as contended by the appellant.

The most appropriate heading for it would be 85.12 as arrived at by the lower appellate authority. Consequently, we dismiss the appeal.

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