Commissioner of Customs Vs. Cipla Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-30-1997

Reported in : (1998)(102)ELT739TriDel

Appellant : Commissioner of Customs

Respondent : Cipla Ltd.

Judgement :

1. These three appeals (one by the assessees and two by the Revenue) involve the same points and, therefore, are taken up for disposal together in this single order.

2. The assessees manufactured "Salbutamol Inhaler". In the Inhaler, the drug is packed in a metal container which is fitted in the outer plastic housing.

The Inhaler contains a spray device using metered valves which ensures a single dose to be delivered on pressure being applied irrespective of the duration of the application of pressure. The assessees imported such valves. The assessees claimed classification under Heading 8481.80 of the CTA, 1975 with benefit of Notification No. 153/86. The Customs, however, classified the product under Heading 9619.10. The refund claim of the assessees on the ground that classification under Heading 8481.80 was more appropriate, was rejected by the Assistant Collector.

In appeal proceedings, the classification was held to be under 8481.80 but the benefit of notification was denied. The appeals filed by the department are against the classification approved by the Collector (Appeals) and the assessees are before us contesting the denial of the benefit of notification.

3. We have heard Shri V. Lakshmikumaran, Advocate, for the assessees and Shri D.S. Negi, SDR for the Revenue.

"Taps, cocks, valves and similar appliances for pipes, hoiler shells, tanks, vats or the like including pressure-reducing valves and thermostatically controlled valves."
5. Shri Negi, learned SDR argued that Chapter 84 covers only machinery and Aerosol cans do not fall under the description of "machinery." He also argued that the description indicates that it covers valves for large machinery or appliances and does not cover aerosol vales. Shri Lakshmikumaran, learned Advocate referring to Note 5 to Section XVI argued that definition of machinery made thereunder is wide enough to cover the impugned goods. He also referred to the Explanatory Notes to Heading 84.81 in the C.C.C.N. (Page - 1323) whereby the impugned goods fall under this heading. Shri Negi further claimed that aerosol dispensation was akin in function to scent spray and toilet spray which were covered be under Heading 96.16 and, therefore, the classification adopted by the Assistant Collector was accurate. Shri Lakshmikumaran, Advocate referring to the coverage of the Tariff entries maintained that the functions were similar but that toilet sprays were not meant for delivering metered doses. Commenting on the coverage of the entry, he argued that parts of spray namely, valves would not be covered under this entry. Referring to Note 2(A) to Section XVII, he stated that valve was specifically included under Heading 8481 and would continue to be classified thereunder. He further stated that unlike other sub-headings under Chapter 96, such as 9613, parts of goods falling under 9616 do not fall under that sub-heading or under any other heading of that Chapter. Therefore, valves would at all times be classified under Heading 8481 only.

6. Shri Lakshmikumaran further argued that vide Public Notice dated 30-11-1983 the classification of aerosol valves has been shown under Heading 8461 (2) of the Customs Tariff as it then existed. Referring to the text of that Tariff Entry and the

current Heading 8481, he stated that they were identical. Therefore, where such goods were earlier classifiable under old Heading 84.61 (2), they had to be classified under current heading 84.81. In arguing that Tariff Advice had force of law, he relied upon the Supreme Court judgment reported in 1996 (87) E.L.T. 19.

7. We have carefully examined the cited Tariff Entries, the Chapter and the Section Notes and the Tariff Advice. Explanatory Notes in the C.C.C.N. specifically cover inclusion of such valves under Heading 84.81. The function of aerosol can dispensing metered drug is distinct from the purfume dispensing set. The valves used in such spray, therefore, are different. The valves which are parts of spray apparatus do not find their place in Chapter 96. On consideration of this aspect, we find that the Collector was right in classifying the goods under Heading 84.81.

8. The Notification No. 153/86 at Serial No. 26 prescribed concessional rate of duty for the valves and parts of the following description :- "Isolating valves, non-return valves, safety valves, exhaust relief valves, thermostatically controlled valves, solenoid operated valves, valves made of corrosion-resisting material such as stainless steel, nickel, monel, incolony hastelloy and other valves lined with rubber or other corrosion-resisting materials; 9. Learned Advocate submitted that the impugned goods were non-return valves. The notification uses the same wordings as it existed in the old Tariff Heading 8461. The same goods are now described in sub-heading 8481.30 as "check valves". Citing from the Valve Users Manual, Edited by J. Kemphy, he said that check valves are also described as non-return valves. The purpose of check valves was to set the flow in one direction and to prevent it in reverse direction. We find force in the argument of the learned Advocate that aerosol device containing medicament has to prevent contamination of its contents. The check valves or non-return device would check the reverse flow. On perusal of the extract of the technical book, we find that description 'nonreturn valve' used in the Notification covers the description or "check valves" in Heading 8481.30. We, therefore, hold that the benefit of Notification is also available to the contested goods.

10. In the result, we allow the Appeal No. C/3828/87-B2 filed by. Cipla Ltd. and dismiss Appeal Nos. C/3829/87-B2 and C/665/93-B2 filed by the Revenue. The

consequential relief to the extent warranted is allowed to the assessees.