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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-12-1997

Reported in : (1997)(94)ELT341TriDel

Appellant : Boolani Engineering Corpn.

Respondent : Collector of Customs

Judgement :
1. The dispute is in respect of imported Power and Measuring Control Panels for Extruder temperatures and pressure control as well as for heating and drive of extruders. These control panels were classified by the Asstt. Collector at the time of clearance under Heading 85.18/27(1) of the Customs Tariff. It was assessed under that heading on the ground that imported product was nothing but control panel of the general type. Subsequently the assessee has filed a refund claim, claiming the classification under Heading 84.59(2). This was ruled out by the Asstt.

Collector holding that there was a specific entry for control panel under Heading 85.18/27(1). Not being satisfied with the order passed by the Asstt. Collector, the party has approached the Collector (Appeals) by way of appeal. According to the party, for the first time before the Collector (Appeals) they have claimed that the item in question was classifiable under 84.38(1) but the same has not been considered by the Collector (Appeals) in his order. We find that there was no reference to the item under 84.38(1).

2. Heard both sides, Shri L.P. Asthana, ld. Counsel appearing for the appellants submitted that he is not pressing the claim of the party under Heading 84.59(2) but nevertheless is classifiable under 84.38(1).

Alternatively he argued that if the item is not classifiable under Chapter 84 but it cannot be classified under 85.18/27(1) as held by the department and on the other hand it is appropriately classifiable under sub-clause 3 of 85.18/27. The relevant entries 84.38,85.18/27(1) and sub-clause 3 of 85.18/27 read as follows :- "84.38 Auxiliary machinery for use with machines of Heading No. 84.37 (for example, dobbies, jacquards, automatic stop motions and shuttle changing mechanisms); parts and accessories suitable for use solely or principally with the machines of the present heading or with machines falling within Heading No. 84.36 or 84.37 (for example, spindles and spindle flyers, card clothing, combs, extruding nipples, shuttles, healds and heald lifters and hosiery needles); 85.18/27 Electrical capacitors; electrical apparatus for making and breaking electrical circuits for the protection of electrical circuits, or for making connections to or in electrical circuits; resistors other than heating resistors; printed circuits; switch boards (other than telephone switch boards) and control panels; electric filament lamps and discharge lamps, arc-lamps; electronic valves and tubes; photo-cells; mounted piezo-electric crystals; diodes, transistors and similar semi-conductor devices; light emitting diodes, electronic micro-circuits; insulated electric wire, cable, bars, strip and the like whether or not fitted with connectors; carbons, brushes, arc-lamp carbons, battery carbons, carbon electrodes and other carbon articles of a kind used for electrical purposes; insulators of any materials; insulating fittings for electrical, equipment; electrical conduit tubing and joints therefor, to base metals lined with insulating material; electrical appliances and apparatus, having individual functions, not falling within any other heading of this chapter: (3) Electrical apparatus for making and breaking electrical circuits for the protection of electrical circuits or for making connections to or in electrical circuits; resistors; switch boards and control panels: Provided that the articles are designed for use in circuits of 400 volts or above, or of 20 amperes or above or for use with motors of .._ 1.5 KWs or above." 3. Shri G.D. Sharma countering the arguments submitted that Heading 85.18/27(3) refers to "Provided that the articles are designed for use in circuits of 400 Volts or above" and since the same has not been established and referring to the chapter note, he submitted that for the classification of articles defined in this note Heading No.85.18/27 shall take precedence over any other heading in the Schedule which might cover them by reference to, in particular, their function.

Accordingly department was right in classifying the item under Heading 85.18/27(1) of the relevant tariff.

4. We have carefully considered the submissions made by both sides and perused the records. On going through the relevant tariff entries with reference to the imported item, we find that there is some force in the arguments advanced on behalf of the appellants that this item in question is classifiable under 85.18/27(3). Whether the articles are designed for use in circuits of 400 volts or above is not clear from the record. We also take note of the fact that there was a handwritten note in the Bill of Entry mentioning 400 volts and above. Since this point has not been raised before the authorities below nor considered by them, we are of the view that this matter will have to go back for reconsideration. Accordingly we are remanding the matter to the concerned Asstt. Commissioner to examine the issue afresh and to pass an appropriate order in accordance with law after providing opportunity to the appellants. The appellants may make use of this opportunity and produce evidence, if any, in support of their claim that the item falls under 85.18/27(3) of the Customs Tariff Act. In these terms appeal is allowed by way of remand.

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