

Samtel India Ltd. Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-14-1997

Reported in : (1997)LC677Tri(Delhi)

Appellant : Samtel India Ltd.

Respondent : Collector of Customs

Judgement :

1. This appeal is directed against Order-in-Appeal dated 4-2-1991 of Collector of Customs (Appeals).

2. The appellants imported parts of electron guns in SKD/CKD condition.

They claimed benefit of Notification No. 345/86, dated 16-6-1986. This was denied to them as they were found eligible to exemption only under Notification 188/87-Cus., dated 29-4-1987 which mentions "Electron Guns".

2. Arguing for the appellants, Id. Consultant submits that they imported parts of electron guns in CKD conditions. There is no doubt that by virtue of rules of interpretation, they would be classifiable under Chapter 85 as electron guns. This interpretative rule however, cannot apply to exemption Notification 345/86 which refers to parts of electron guns. The goods imported by them are parts in CKD conditions and would be fully covered by this expression.

3. Id. DR reiterates the departmental arguments and submits that even if for the purpose of notification goods in CKD conditions have to be considered only as

parts, they have to satisfy the department that the goods imported in fact are parts of electron guns and each such part is classifiable under Chapter 85.

4. We have heard both sides. Collector (Appeals) has held that the appellants have not put forth any evidence to indicate that their own declaration in the Bill of Entry was wrong and that what they imported was not Electron guns in CKD condition but the parts of Electron guns.

There is no doubt that goods would be classifiable as electron guns for purpose of classification. However, so long as they are not literally electron guns, they have to be considered only as parts of electron guns. Chapter Note, Section Notes and interpretative rules cannot be as such applicable while interpreting an exemption notification. This was clearly held in Tribunal's order in the case of Set Telecommunications Pvt. Ltd. v. Collector of Customs, Bombay -1997 (19) RLT 629. Ld.

Consultant submits that they claimed benefit of Notification 188/87 only when the benefit of other Notification 345/86 was not extended to them. This was done to avoid heavy demurrage and there was no option but to avail of the said concession which the department was willing to extend rather than pay tariff rate and clear the goods. We are of the view that merely because they were given benefit under Notification 188/87 they cannot be estopped from claiming benefit under Notification 345/86 which according to them is more beneficial. Under Notification 345/86 against S. No. 104 mention parts of electron guns whereas Notification 188/87 placed at page 3 of the appeal papers exempts electron guns. Since these are electron guns only for the purpose of classification by virtue of rules of interpretation they cannot be denied the benefit of Notification 345/86 since these in fact, are only parts as these were imported. We therefore, have to hold that in case the goods are parts of electron guns, even though in CKD condition, they would be eligible to benefit of exemption under Notification 345/86 as parts of electron guns. Since however Notification 345/86 is a conditional notification, they would have to satisfy the Customs authorities that they are eligible to this exemption. We, therefore, set aside the impugned order and remand the matter to the Asstt.

Collector for de novo decision after affording appellants a reasonable opportunity of being heard.

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