

Collector of Central Excise Vs. Gadodia Electronics Ltd.

Collector of Central Excise Vs. Gadodia Electronics Ltd.

SooperKanoon Citation : sooperkanoon.com/11514

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-11-1997

Reported in : (1997)(94)ELT539TriDel

Appellant : Collector of Central Excise

Respondent : Gadodia Electronics Ltd.

Judgement :

1. In this appeal filed by the Revenue, the matter relates to the classification of colour video monitors under the old Central Excise Tariff. The respondents M/s. Gadodia Electronics Ltd. at the time of the clearance of their above named products paid Central Excise Duty under Item No, 37BB of the Tariff. Subsequently, they applied for refund on the ground that the colour video monitors were correctly classifiable under Item No. 68 of the said Tariff. The Asstt. Collector of Central Excise, Ghaziabad, relying upon the Tariff Advice No. 37/84, dated 6-8-1984 issued from File No. 151/5/82-CX-4 by the Central Board of Excise & Customs held that the video monitors were rightly classifiable under Item No. 37BB of the erstwhile Central Excise Tariff. On appeal, the Collector of Central Excise {Appeals}, New Delhi, observed that the video monitor was not capable of recording any sound or image and was only a display device. He agreed with the contention of M/s. Gadodia Electronics Pvt. Ltd. that the colour video monitors were classifiable under Item No. 68 of the Tariff.

2. We have heard Shri A.K. Agarwal, SDR, for the appellants /Revenue, and Shri L.P. Asthana, Advocate, for the respondents M/s. Gadodia Electronics Pvt. Ltd. 3.

Shri A.K. Agarwal, SDR, submitted that video monitors under the Harmonised Commodity Description and Coding System (HSN) were classifiable under Heading No. 85.28 along with Reception (sic) Apparatus for Television. It was his submission that the matter was covered by the Tariff Advice No. 37/84 relied upon by the Asstt.

Collector of Central Excise.

4. In reply, Shri L.P. Asthana, Advocate, referred to the scope of Item No. 37BB of the erstwhile Central Excise Tariff and submitted that the Tariff Advice No. 37/84 was not applicable to the goods in question. He stated that the video reproducing apparatus was classifiable under Heading No. 85.21 of the HSN, while the video monitors have been separately included in Heading No. 65.28 of the HSN. He further submitted that in video viewing there were three stages of recording, reproduction and screening. The video monitor is for screening the image after the recorded material had been reproduced by suitable reproducing apparatus. In his view, the decision of the Collector of Central Excise (Appeals) does not call for any interference.

5. We have carefully considered the matter. The respondents were engaged in the manufacture of colour video monitors. They had sought classification of these colour Video monitors under Item No. 68 of the erstwhile Central Excise Tariff which covered 'all other goods not elsewhere specified'. The Assistant Collector of Central Excise, Ghaziabad, had observed that the video monitor was capable of receiving and reproducing video signals which comprised of image and sound signals. He classified them under Item No. 37BB of the said Tariff.

6. Item No. 37BB of the erstwhile Central Excise Tariff covered the following: 37BB TELEVISION IMAGE AND SOUND RECORDERS AND RE- PRODUCERS INCLUDING VIDEO CASSETTE RECORDERS (iii)TELEVISION CAMERAS (INCLUDING VIDEO CAMERAS).

Item No. 37BB was introduced in the Central Excise Tariff vide clause 49 of the Finance Bill, 1982, introduced in the Lok Sabha on 27-2-1982.

It was explained vide Bombay Collectorate Trade Notice No. 44/82, dated 22-3-1982, appearing at page T-62 of 1982 (9) E.L.T. that Item No. 37BB covered all kinds of television image and sound recorders and reproducers whether the same are for professional use or for home use.

In particular instruments of Betamax, VHS (Video Home System), VTR (Video Tape Recorders) and VCR (Video Cassette Recorders) types were covered under that item. Video cassette decks which are sold without colour television sets through which the recorded programmes could be seen, were also classifiable under that Item. In the year 1982, when Item No. 37BB, as extracted above, was introduced in the Central Excise Tariff, broadcast television receiver sets were already covered by a separate Tariff Entry No. 33A of the erstwhile Central Excise Tariff which entry had been introduced in the Central Excise Tariff in the year 1961. Thus the broadcast television receiver sets, were not included in the expression "television image and sound recorders and reproducers".

7. According to the Explanatory Notes to the HSN (Second Edition -1996, Volume 4 at page 1493), video monitors are receivers connected directly to the video camera or recorder by means of co-axial cables so that all the radio-frequency circuits are eliminated. They are used by television companies, or for closed-circuit television (airports, railway stations, steel plants, hospitals, etc.). These apparatus consist essentially of devices which can generate a point of light and display it on a screen synchronously with the source signals. They incorporate one or more video amplifiers with which the intensity of the point can be varied. They can, moreover, have separate inputs for red, green and blue, or be coded in accordance with a particular standard. For reception of coded signals, the monitor must be equipped with a decoding device covering the separation of the red, green and blue signals. The most common means of image re-constitution is the cathode-ray tube; for directvision, or a projector with up to three projection cathode-ray tube; however, other monitors achieve the same objective by different means (e.g. liquid crystal screens, diffraction of light rays on to a film of oil). Such video monitors are different from the display units of automatic data processing machines.

8. The expression used in Item No. 37BB is "reproducers". In television image and sound recording apparatus, electric impulses (signals) which correspond to the images and the sound are recorded on media, generally consisting of magnetic tape. The signals can be obtained by connecting the recorder either to a television camera or to a television receiver.

When used for reproduction, the apparatus convert the recording (e.g.

the magnetic pattern on the tape) into video signals. These signals are passed on either to a transmitting station or to a television receiver.

The reproducing apparatus are designed to reproduce images and sound directly on to a receiver. The media to be used in these apparatus are prerecorded mechanically, magnetically or optically, on special recording equipment. The following examples of reproducing apparatus have been given in the HSN: (1) Apparatus using video discs in which the image and sound data are stored on the disc by various methods and picked up by a laser optical reading system, capacitive sensor, pressure sensor or magnetic head.

(2) Apparatus that decodes and converts into a video signal image data recorded on a light sensitive film (the sound being recorded by magnetic process on the same film).

9. From the above, it is clear that the reproducers are those which reproduce images and sound on to a receiver. The receivers, whether they be television receivers or video monitor were not the reproducers, but the receivers of the images and sound reproduced by the reproducers.

10. It is seen that presently while reproducing apparatus is classifiable under Heading No. 85.21 of the HSN (1996), video monitors are separately classifiable under Heading No. 85.28 of the said HSN. They are two separate products. The video monitor is neither a reproducer nor the broadcast television receiver. It had no mechanism to record or reproduce any image or sound. It is a display device through which the recorded programmes could be seen. Independently, it could not be considered as television image and sound recorder and reproducer for the

purposes of classification under Item No. 37BB. It is also not akin to video cassette decks. Obviously, as presented for assessment, it was not a combination set with one or more of the following : 11. The Assistant Collector of Central Excise, Ghaziabad, had referred to the Tariff Advice No. 37/84, dated 6-8-1984 issued by the Central Board of Excise & Customs. The issue dealt with in that tariff advice was whether the closed circuit television sets could fall under Item No. 37BB or Item No. 68 of the erstwhile Central Excise Tariff. In the closed circuit television set, there was a television image, reproducer and a television image camera, both connected by a cable. The Board agreed with the observations of the 20th South Zone Tariff-cum-General Conference that the closed circuit television set, as a whole, was nothing but a television image reproducer to which a camera is attached and that the whole set would qualify for assessment under Item No.37BB. It was held as per that Tariff Advice No. 37/84 that the closed circuit television set would merit classification under Item No. 37-BB of the Tariff. In the present case we are only concerned with the classification of the video monitor presented for assessment, not as a closed circuit television set but as an individual item. It was neither an image reproducer nor a closed circuit television set. We do not consider that the reliance by the Asstt. Collector of Central Excise, Ghaziabad upon the said tariff advice was well placed.

12. Taking all the relevant considerations into account, we agree with the Collector of Central Excise (Appeals), New Delhi, that the video monitor was not capable of recording any sound or image [we may add, was not capable of reproducing images or sound], and was only a display device. As a result, we do not find any merit in this appeal and the same is rejected.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com