

Pentax Engineering Pvt. Ltd. Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-13-1997

Reported in : (1998)(99)ELT368TriDel

Appellant : Pentax Engineering Pvt. Ltd.

Respondent : Collector of Customs

Judgement :

1. In this appeal filed by M/s. Pentax Engg. Pvt. Ltd., Bombay, the Order-in-Appeal dated 26-9-1991 passed by the Collector of Customs (Appeals), Bombay is under challenge. The matter relates to the classification of the Sensor Lower Explosive Limit Catalytic (SLELC).

The appellants had classified these goods under sub-heading No. 9027.90 of the Schedule to the Customs Tariff Act, which covered microtomes; parts and accessories. The Heading No. 90.27 covered the instruments and apparatus for physical or chemical analysis; instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light. The Revenue had classified them under sub-heading No. 8531.90, which covered the parts of electronic sound or visual signalling apparatus for example bells, sirens, indicator panels, burglar or fire alarms etc. It includes the goods covered under Heading No. 85.12 or 85.30 with which we are not concerned in these proceedings. The Collector of Customs (Appeals), Bombay, after discussing the rival entries and after referring to the Rules 3(a) of the General Rules for the

interpretation of the Customs Tariff held that as the goods imported were part of an alarm, they were correctly classifiable under Heading No. 8531.90 (sic). He also referred to the appellants' contention that in terms of Note I(m) to Section XVI, the goods were excluded from Section XVI and hence they were not classifiable under Heading 85.31. He referred to the classification of the gas detection and monitoring system under Heading No. 85.31 and took a decision that the part of the gas detection and monitoring system were to be classified under sub-heading No. 8531.90.

2. We have heard Shri M.J. Nambiar, Consultant for the appellants and Shri S.N. Ojha, JDR for the respondents/Revenue.

3. We have gone through the facts on record and have perused the technical literature filed by the appellants. The goods imported had been described as Sensor Lower Explosive Limit Catalytic. The appellants were engaged in the manufacture of Pantex Gas Detection and Monitoring System. Admittedly, the Sensor imported was a part of the gas detection and monitoring system. The gas detection and monitoring system was classifiable under Heading No. 85.31 of the Tariff, which covered electric sound or visual sound apparatus. As explained by the Consultant, the role of Sensor was to detect the level of the explosive gas etc. and to sound the alarm although at a distance as and when the level of the explosive gas, etc. reach a particular level. We consider that taking independently the sensor was neither an instrument nor apparatus for physical or chemical analysis; nor it could measure or check, quantity of explosive gas, etc. We consider that when the gas detection and monitoring system as a whole was not classifiable under Heading No. 90.27 of the Tariff, the parts in this case, the sensor could not be covered by the sub-heading No. 9027.90 of the Tariff.

4. The Id. Consultant had referred to the Tribunal's decision in the case of Asia Engg. Co. v. C.C., Bombay - 1997 (92) E.L.T. 66 (Tribunal). The Departmental Representative had submitted that in this case the smoke detector was a complete instrument for detecting smoke level with radioactive source and passing on to the fire alarm system for necessary action. The Tribunal considered that such a smoke detection was not a fire alarm itself and as it was a complete instrument, it was

classifiable under sub-heading No. 9027.80 of the Customs Tariff as other instruments and apparatus. In the case before us, there is no ground to consider the sensor, a part of gas detection system, as a complete instrument or apparatus for the purpose of sub-heading No. 9027.80. We consider that the goods before the Tribunal in the case of Asia Engg. Co. (supra) were different.

5. In the case of BHEL v. C.C. -1989 (39) E.L.T. 53 (Tribunal), the goods in question incorporated a measuring equipment referred to as 14 Carts Ripple Counter. The Tribunal observed that the flame sensing system was an apparatus for measuring the intensity of the flame via ultra violet rays radiated by flame. If the intensity of flame goes down below a certain level, the system gives the warning of that and sets in reaction certain relays which trips off the fuel supply to system. We consider that the goods involved in the present proceedings were not any way akin to the goods which were before the Tribunal in the case of BHEL v. C.C. referred to above. As the goods in question were not classifiable under sub-heading No. 9027.90, the Notification No. 172/89-Cus., dated 29-5-1989 was also not applicable.

6. The Departmental Representative had referred to the Explanatory Notes under the Harmonized Note Description and Coding System (HSN). He had referred to the Notes under Heading No. 85.31. It has been explained therein under Clause-G (sic) that the electric vapour or gas alarms consisting of a detector and a sound or visual alarm, is to warn of the presence of hazardous gaseous mixtures (e.g., natural gas, methane). The goods were not fire alarms . which were classifiable under Heading No. 90.22. He also referred to the Explanatory Notes under Heading No. 90.27 wherein in Clause (9), it had been mentioned that the electronic smoke detectors equipped solely with an alarm fall in Heading No. 85.31. The gas or smoke analysis apparatus under Heading No. 90.27 were classifiable only when they were used to analyse natural gas, combustion by-products (burnt gases) in coke ovens, gas products, blast furnaces, etc. in particular for determining their content of carbon dioxide, carbon monoxide, oxygen, hydrogen, nitrogen or hydrocarbons. It has been explained in Clause-8 under Heading No. 90.27 that the electrical gas or smoke analysis apparatus are mainly for determining and measuring the content of the following gas :- 7. The

appellants were engaged in the manufacture of LPG related products and we consider that their final products gas detectors and monitoring system was classifiable under Heading No. 85.31. The sensor separately imported and which admittedly was a part of this system was correctly classifiable under sub-heading No. 8531.90 of the Tariff.

8. In view of the above discussion, we do not find any ground to interfere with the views taken by the Collector of Customs (Appeals), Bombay and as a result, the appeal is rejected. Ordered accordingly.

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