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Collector of Customs Vs. New Electronics Industries Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-19-1997

Reported in : (1998)(98)ELT690TriDel

Appellant : Collector of Customs

Respondent : New Electronics Industries Ltd.

Judgement :

1. When the case was called, none appeared on behalf of the appellants.

A notice for today's hearing had been issued on 11-7-1997 and the notice was duly acknowledged by the respondents. In these circumstances, the appeal is being taken up in the absence of the respondents.

2. The Revenue filed these appeals against the common Order-in-Appeal dated 12-1-1991. In the impugned order, the Collector of Customs (Appeals) held that the load cells are specifically classified under Tariff Heading No. 90.31. Therefore, they are exempt from auxiliary duty in terms of the Notification No. 105/89-Cus., dated 1-3-1989.

3. Heard Shri A.K. Agarwal, SDR who appeared on behalf of the appellants/Revenue. The Revenue filed this appeal on the ground that the Load Cell is of unique nature and not related to either measuring of checking of any parameters. These are not eligible for benefit of Notification No. 23/91 (Parallel Notification No. 105/89). The Collector of Customs, Bombay in Para 6 of his order

held as under :- "6. It is also relevant to refer to Notification 105/89-Cus., dated 1-3-1989. The said notification exempts goods specified in column 3 of the table annexed thereto falling within chapters of the tariff specified in column 2 of the said Table from whole of auxiliary duty. At Sr. No. 37 the following entry occurs in the said table :---Sr. No. Chapters of the First Schedule to Description of goods the Customs Tariff Act, 1975---37 90 Electrical, measuring, checking, analysing or (6) 'Electrical measuring, checking, analysing or automatically controlling instruments and apparatus' means - (a) Instruments or apparatus for measuring or checking electrical quantities.

(b) machines, appliances, instruments or apparatus of a kind described in Heading No. 90.14, 90.15, 90.16, 90.17,90.24,90.25,90.26, 90.27, 90.29 (other than stroboscopes 90.31 or 90.33, the operation of which depends on an electrical phenomenon which varies according to the factors to be ascertained or automatically controlled; Therefore, items falling under Tariff Heading 90.31 are covered under the terms 'electrical measuring, checking, analysing or automatically controlling instruments and apparatus.' Hence, as per explanation given in the said notification under 6(b) the Heading 90.31 includes machines, appliance, instruments or apparatus.

Therefore, the distinction made by the Assistant Collector between apparatus and instrument is not justified nor is it borne out by the wordings of the notification. Since goods are specifically classified under Tariff Heading 90.31, they are exempt from auxiliary duty in terms of Sr. No. 37 of the said Notification and I hold accordingly." 4. There is no dispute regarding the classification of the load cells imported by the respondents. These load cells are classified under Tariff Heading No. 90.31. The Notification No. 105/89-Cus., dated 1-3-1989 exempts the goods of Chapter Heading No. 90.31 from auxiliary duty. As per Explanation 6(b) the Heading No. 90.31 includes machines, appliance, instruments or apparatus. As the load cells are falling under Tariff Heading 90.31, hence they are entitled for benefit of exemption Notification No. 105/89-Cus., dated 1-3-1989.

5. In view of the above discussion, we do not find any infirmity in the impugned order. The appeals filed by the Revenue are dismissed. Ordered accordingly.

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