Collector of C. Ex. Vs. Prabha Engineering (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-07-1997

Reported in : (1998)(100)ELT370TriDel

Appellant : Collector of C. Ex.

Respondent : Prabha Engineering (P) Ltd.

Judgement :

1. This Appeal is directed against order dated 5-4-1989 passed by Collector (Appeals).

2. The Respondents filed classification lists in respect of parts and accessories of photocopying apparatus claiming classification under Heading 90.33 attracting duty at the rate of 15% ad valorem. This classification was approved by the Assistant Collector. Collector, however, vide application before the Collector (Appeals) claimed correct classification under 90.09 as parts of photocopying apparatus.

The claim was based on Chapter Note 2(a) of Chapter 90. Collector (Appeals) however held that there was no sub-heading for parts and accessories under Central Excise Tariff Heading 90.09 and therefore such parts and accessories would be classifiable under Heading 90.33.

Hence this Revenue Appeal.

3. Chapter Note 2(a) states that parts and accessories which are goods included in any of the heading of this chapter or of Chapter 84, 85, or 91 are all to be classified under their respective headings. The admitted position is that none of these parts are classifiable as goods in any of the headings of the Chapter 90 or Chapter 84, 85 and 91. We have therefore after excluding Chapter Note 2(a) go to Note 2(b) of Chapter which states that other parts and accessories, if suitable for use solely or principally with the particular kind of machinery, instrument or apparatus, are to be classified with the machines, instrument or apparatus of that kind. Classification lists placed at page 6 of the appeal papers indicates that the impugned goods are parts and accessories for machines and apparatus of Chapter Heading 90. Note appended to this classification list indicates that these are used in photocopying apparatus which is classifiable under Heading 90.09.

Collector (Appeals) while rejecting the Revenue Appeal has observed".... But as there is no such heading as parts and accessories in the Central Excise Tariff under Heading 90.09, the parts and accessories of the goods covered under Chapter Heading 90.09 would be covered under Chapter Heading 90.33." 3. HSN notes at page 1473 clearly indicate that the Heading 90.09 also covers parts and accessories of goods of this heading. On the other hand explanatory note under Heading 90.33 at page 1537 clearly indicate that "Those identifiable as suitable for use solely or principally with a particular kind of machine, appliance, instrument or apparatus, or with a number of machines, appliances, instruments or apparatus of the same heading of chapter; these are classifiable, by application of Chapter Note 2(b), in the same heading as the relevant machines, appliances, instruments or apparatus." 4. Further Chapter Note 3(c) occurring after Note 2 (b) itself indicates that Heading 90.33 is a residuary heading by stating that "All other parts and accessories are to be classified under Heading No.90.33." 4. In view of this we are of the view that the impugned goods which are described in the classification list for use in Photocopying apparatus would be classifiable only under Heading 90.09. In view of this we set aside the impugned order and allow the Revenue Appeal.