**Arphi Electronics (Pvt.) Ltd. Vs. Collector of Customs**

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**SooperKanoon Citation** : sooperkanoon.com/12435

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Dec-23-1997

**Reported in** : (1998)(100)ELT365TriDel

**Appellant** : Arphi Electronics (Pvt.) Ltd.

**Respondent** : Collector of Customs

**Judgement** :

1. Appellants filed these ten appeals a common Order-in-Appeal dated 16-5-1990 passed by the Collector, Customs (Appeals). In the impugned order, the Collector, Customs (Appeals), Bombay denied the benefit of Notification No. 71/86-CE., dated 10-2-1986 as amended in respect of Countervailing Duty (CVD).

2. Appellants made import of receivers, capacitors, microphones, wires, resistors, volume controls etc. through various Bills of Entry. The appellants in the Bills of Entry claimed classification of these goods under Tariff Heading 90.21 of the Customs Tariff as parts of hearing aids and also claimed the benefit of concessional rate of basic duty in terms of Notification No. 114/77, dated 1-7-1977 and also claimed the benefit of CVD in terms of Notification No. 71/86-CE., dated 10-2-1986.

The adjudicating authority ordered the classification of the goods on merit in their respective headings and the benefit of Notification No.114/77-Cus. was granted to the appellants. The benefit of Notification No. 71/86-C.E., dated 10-2-1986 in respect of CVD was denied to the appellants.

3. Learned Counsel appearing on behalf of the appellants submitted that the goods imported are specifically designed for use in the hearing aids. He submitted for granting the benefit of Notification No.114/77-Cus., dated 1-7-1977 to the goods were held to be as parts of hearing aids. He submitted that if for the purpose of benefit of Notification No. 114/77-Cus. the goods were treated as parts of hearing aids then for the purpose of countervailing duty, the goods should also be treated as parts of hearing aids. He therefore, prays that the appeals be allowed.

5. In this case, the benefit of Notification No. 71/86-C.E., dated 10-2-1986 was denied to the appellants in respect of CVD. The main contention of the appellants is that for the purpose of Notification No. 114/77-Cus., dated 1-7-1977, the goods were treated as parts of hearing aids, therefore, the goods should be also treated as parts of hearing aids for the purpose of granting the benefit of Notification No. 71/86-C.E., dated 10-2-1986 for CVD.6. The goods were condensor, microphone, volume control, screws under casing etc. and the adjudicating authority classified the goods on merits under different Customs Tariff Headings. The Collector, Customs (Appeals) in the impugned order held that the classification of the goods on merits has not been challenged by the appellants. The goods were not classified under Tariff Heading No. 90.21 of the Customs Tariff as claimed by the appellants in the Bills of Entry. The Notification 71/86-C.E., dated 10-2-1986 as amended provides as under: "Exemption to spectacle lenses; drawing, and mathematical instruments, artificial limbs and rehabilitation aids, Cinematograph projectors and precision balances. - In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Govt. hereby exempts excisable goods of the description specified in Column (3) of the Table hereto annexed and falling under the Chapter or Heading No. of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), specified in the corresponding entry in column (2) of the said Table from so much of the duty of excise leviable thereon under section 3 of the Central Excises and Salt Act, 1944 (1 of 1944) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table subject to the conditions, if any, laid down in the corresponding entry in column (5) thereof.---------------------------------------------------S. Chapter or Description of

goods Rate ConditionsNo. heading---------------------------------------------------(1) (2) (3) (4) (5)---------------------------------------------------5.

- - - ---------------------------------------------------(1) (2) (3) (4) (5)---------------------------------------------------12.

90.21 Parts and components of Nil If the parts and artificial limbs and cornponents are rehabilitation aids forthe used in the factory handicapped of prod-uction in the manufacture of 4. Notification No. 71/86-C.E., dated 10-2-1986 as reproduced above only provides concessional rate of duty in respect of the goods falling under Chapter or Heading 90.21 and parts thereof.

5. The Tariff Heading 90.21 of the Central Excise Tariff provides as under:"90.21 Orthopaedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability." 6. The Chapter Heading 90.21 of the Central Excise Tariff includes hearing aids. In the present case, the goods imported are not hearing aids but they are condenser, microphone, volume control, screws under casing etc. which were classified on merits in their respective headings, in other words, the goods were not classified under Customs Tariff Heading 90.21 and the classification of the goods was not challenged by the appellants before the Appellate Authority.

7. Notification No. 71/86-C.E., dated 10-2-1986 provides concessional rate of duty to the goods classifiable under Chapter or Heading No.90.21 of the Central Excise Tariff. In the present case, the goods were not classifiable under Tariff Heading 90.21 of the Central Excise Tariff as this sub-heading covers only hearing aids, therefore, the appellants are not entitled for the benefit of Notification No. 71 /86-C.E. as held by the Collector, Customs (Appeals), Bombay in the impugned order.

8. The contention of the appellants is that the goods were treated as parts of hearing aids for the purpose of Notification No. 114/77-Cus., dated 1-7-1977. Notification No. 114/77-Cus., dated 1-7-1977 provides concessional rate of duty for component parts other than primary cells and primary batteries of hearing aids

for deaf aids imported solely for the manufacture of such aids. Therefore, the Notification No.114/77-Cus., dated 1-7-1977 is unconditional in such a way the all the component parts except primary cells and primary batteries of hearing aids are qualified for the benefit of concessional rate of duty whereas the Notification No. 71/86-C.E., dated 10-2-1986 only provides for concessional rate of duty on the goods falling under Heading 90.21 of the Central Excise Tariff, as the goods imported are not classifiable Heading No. 90.21 of the Central Excise Tariff, hence they are not eligible for the benefit of this Notification.

In view of the above discussions, we do not find any merit in these appeals. The appeals are dismissed.