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

Collector of Customs Vs. Arfi Electronics P. Ltd.

Collector of Customs Vs. Arfi Electronics P. Ltd.

SooperKanoon Citation : sooperkanoon.com/12440

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-23-1997

Reported in : (1998)(100)ELT484TriDel

Appellant : Collector of Customs

Respondent : Arfi Electronics P. Ltd.

Judgement :

1. This appeal is filed by the appellants against the order-in-appeal passed by the Collector, Customs (Appeals), Bombay whereby the Collector, Customs (Appeals) granted the benefit of Notification No.71/86-C.E., dated 10-2-1986 in respect of countervailing duty (CVD) to the earphones imported by the respondent. He held in the impugned order the earphones as part of hearing aid and ordered classification of earphones under Heading 90.21 of the Excise Tariff.

2. Shri S.N. Ojha, JDR appearing on behalf of the appellant Collector submitted that the respondents made import of earphone only and the earphone is classifiable under sub-heading 8518 of the Central Excise Tariff. He submits that the Heading 90.21 of the Central Excise Tariff only includes hearing aid and not the earphones. He therefore, prays that the earphones are not classifiable under Heading 90.21 of the Central Excise Tariff and are not entitled for the benefit of Notification No. 71/86-C.E., dated 10-2-1986.

3. Learned Counsel appearing on behalf of the respondents submitted that the earphones are imported for use in the hearing aid, therefore, the Collector,

Customs (Appeals) rightly held in the impugned order that these are parts of hearing aid and are classifiable under Chapter 90. He submitted that the Notification No. 71/86-C.E. provides concessional rate of Countervailing Duty and hence the appeal filed by the Revenue be rejected.

4. We have heard both sides. In this case, the respondents made import of earphones. The contention of the respondents that the earphones are to be used in the manufacture of hearing aid and therefore, these are parts of earphones and are classifiable under sub-heading 90.21 of the Central Excise Tariff. Heading 90.21 of the Tariff provides as under : "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." 5. Sub-heading 90.21 only includes hearing aids and not the parts of hearing aids. The respondents had not imported hearing aids but only earphones.

"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, 1986 (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 Description of goods Rate ConditionsNo. or Head----------(1) (2) (3) (4) (5)----------1.

85 or 90 Parts of cinematograph Nil - projectors other than (a)11.

90.21 Artificial limbs and Nil rehabilitation aids for the12.

90.21 Parts and components of Nil If the parts and artificial limbs and components are rehabilitation aids for the used in the factory handicapped.

of production in the manufacture of 7. The Notification provides concessional rate of duty in respect of the goods classifiable under Heading 90.21.

8. In this case, the respondents made import of earphones and the earphones are specifically mentioned under the Tariff Heading 85.18 of the Central Excise Tariff. The Tariff Heading 85.18 of the Central Excise Tariff provides as under: "85.18 Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones, earphones and combined microphone/speaker sets; audio-frequency electric amplifiers; electric sound amplifier sets." "Parts and accessories which are goods included in any of the heading of this Chapter or Chapter 84,85 or 91 (other than heading No. 84.85,85.48 or 90.33) are in all cases to be classified in their respective headings." The earphones are covered under the Central Excise Tariff Heading 85.18, therefore, the proper classification of the earphone is under Chapter 85 only.

10. In view of the above discussions, we hold that the earphones are classifiable under sub-heading 85.18 of the Central Excise and they are not entitled for the benefit of Notification No. 71/86-C.E., dated 10-2-1986 as this notification includes only the goods falling under heading or sub-heading 90.21 of the Central Excise Tariff.

Consequentially, the impugned order is set aside and the appeal is allowed.

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