

Collector of Central Excise Vs. Kay Jay Engineers

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-12-1998

Reported in : (1999)(65)ECC167

Appellant : Collector of Central Excise

Respondent : Kay Jay Engineers

Judgement :

1. This an appeal filed by the Department against the impugned order passed by the Collector of Customs and Central Excise (Appeals).

2. The short point to be considered in this case is whether intercoms are classifiable under sub-heading 84.79 as claimed by the assessee or under 85.17 of the Schedule as per the department. The relevant tariff entries are as follows :- "84.79 Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter"85.17 Electrical apparatus for line telephony or line telegraphy, including such apparatus for carrier-current line-systems." The Asstt. Collector as per his order held that intercoms are classifiable under Heading 85.17 as electrical apparatus for line telephony or line telegraphy including such apparatus for carrier-current line-system. Order in appeal filed by the assessee Collector (Appeals) has held that items in question are classifiable under Heading 84.79 following the decision of the Karnataka High Court in the case of Associated Electronic & Electrical Industries Pvt. Ltd. v. Asstt. Collector of Central Excise, Bangalore - 1985 (22) E.L.T. 368 (Kar.). The Karnataka High Court while distinguishing the two systems, i.e., telephone and intercom with reference

to various dictionaries observed that the term intercom is a machine of an office equipment used for transmission and reception of messages in an office, establishment or a hotel. Even otherwise, in popular sense an 'intercom' is a machine or is an office equipment used for transmission and reception of messages exclusively in an office. Further, it is observed that although an intercom forms the function of an internal communication system as an internal telephone yet that does not make it a telephone as one popularly understands inasmuch as when one proposes to purchase and install an intercom in his office or establishment.

3. When the matter was called none appeared on behalf of the respondents. However, they have requested to decide the case on merits, in their written submissions it was submitted by them that the issue involved in this case has been covered by the following decisions :-Associated Electronic & Electrical Industries Pvt. Ltd. v. Asstt. Collector of Central Excise, Bangalore -1985 (22) E.L.T. 368 (Kar.)Radio Supply Stores (P) Ltd. v. Union of India and Ors. - 1985 (20) E.L.T. 15 (Cal.)Collector of Central Excise, Bangalore v. Indian Telephone Industries Ltd., Bangalore.

4. Heard Shri Nunthuk, Ld. D.R., who reiterated the ground taken by the Department. He submitted that 85.17 clearly specifies telephone or line-telegraphy and since the intercom functions as telephone this has to be classified under 85.17.

5. We have considered the matter. We find that Karnataka High Court has made a clear distinction between telephone and intercom. It has analysed the systems and held that intercom though performs the function of a telephone, but it is altogether different having individual functions confining to a particular office or an establishment. Following the ratio of the decision of the Karnataka High Court and in the absence of any contrary citation, we are of the opinion that this item is classifiable under 84.79 as it was held by the Collector (Appeals). Since we do not find any infirmity in the impugned order, the appeal filed by the Department is hereby dismissed.

Cross objections filed by the party are also disposed of in the above terms.

