Collector of Customs Vs. Endee Engineers

Collector of Customs Vs. Endee Engineers

SooperKanoon Citation : sooperkanoon.com/13078

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-16-1998

Reported in : (1998)(104)ELT403TriDel

Appellant : Collector of Customs

Respondent : Endee Engineers

Judgement :

1. M/s. Endee Engineers had imported a consignment containing the goods described as "Combustible Gas Detector/Alarm Model - 3835 and sought clearance under sub-heading No. 9027.10 of the Customs Tariff. For Import Trade Control (ETC) purposes, they sought clearance against the Appendix I Part B Item No. 4(3) of the ITC with covers "Combustible Gas Indicator like gas detector and accessories". The Asstt. Collector, Customs who adjudicated the matter observed that the goods imported were combustible gas alarm which was not merely a detector but included a signalling part also. Insofar as the classification was concerned, it was held to be classifiable under sub-heading No. 8531.10 of the Customs Tariff. On appeal, the Collector, Customs (Appeals), Bombay decided the matter in favour of the appellants (respondents before us) both with regard to ITC angle as well as of classification.

2. The Revenue in the grounds of appeal had pleaded that the goods did not fit into the description of Entry No. 4(3) of Appendix I Part B AM 1985-88 Policy and that the goods in view of the Explanatory Notes to Heading No. 85.31 were classifiable under sub-heading No. 8531.10 and not under subheading No.

9026.80 or 9027.10.

3. We have heard Shri R.S. Sangia, JDR for the appellant Revenue. When the matter was called, no one appeared for the respondents. It is seen that this matter had come up earlier on 9-10-1996, 12-11-1996, 28-1-1997,11-3-1997, 12-5-1997, 29-7-1997, 7-10-1997 and 24-12-1997.

The respondents were not present on any of these dates. Notice for today's hearing had also been received back undelivered from the postal authorities. In the circumstances, we are proceeding to deal with the matter on merits after hearing Shri R.S. Sangia, JDR.4. R.S. Sangia, JDR submits that the goods to be classifiable under Heading No. 90.27 of the Customs Tariff showed to be in the nature of instrument and apparatus for physical or chemical analysis, for measuring or checking viscosity, porosity, expansion surface tension or the like or for measuring or checking quantities of heat, sound or light or micro-tones. The goods imported were to detect the sound alarm for the safety of the persons when the level of combustible gas went over the desired level. He pleaded that the goods were correctly classifiable under Heading No. 85.31 which covers electric sound or visual signalling apparatus.

5. We have carefully considered the matter. The goods had been described in the Bill of Entry as "Combustible Gas Dectector, Combustible Gas Alarm Model - 3835". Its purpose was not to analyse the gas but to detect the level when it exceeded the permissible limit to sound the alarm to forewarn the persons who were in the area of such combustible gas. It did not reflect the composition of the gas, its chemical or physical analysis.

6. The adjudicating authority had classified the same under sub-heading No. 8531.10 which covers the burglar or fire alarms and similar apparatus which was falling under Heading No. 85.31 which covers the following : "Electric sound or visual signalling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarm), other than those of Heading No. 85.12 or 85.30." 7. Heading 85.12 was for electric lighting or signalling equipment etc.

while Heading No. 85.30 covers electrical signalling safety or traffic control equipment. The gas and detector and alarm system indicated both visual and through alarm the level of the gas when it goes beyond the given level.

8. The Collector, Customs (Appeals) had held that the goods were covered by sub-heading No. 9026.80 or 9027.10 of the Customs Tariff.

Heading No. 9026.80, covers the instrument and apparatus for measuring or checking the flow level, pressure of other variable of liquids or gases. We consider that the goods in question could neither measure nor check the flow, level or pressure of the gas. If flow level and pressure of the gas remains and the gas detector could do nothing with the flow level or pressure of the gas. It could only detect and sound alarm for the safety of the person concerned. Similarly Heading No.90.27 was for the instrument and apparatus for physical or chemical analysis, for measuring or checking viscosity, porosity, expansion etc.

or for measuring or checking quantities of heat, sound and the like. We consider that the goods in question had nothing to do with the analysis, measuring, checking of the gas. They only indicated that the leakage of the gas had gone beyond the desired level. As what was the actual level this instrument could not indicate. The ld. DR had referred to the HSN Explanatory Notes wherein it had been explained that the electric vapour or gas alarm consisting of detector and sound or visual alarm to warn of the person or hazardous gaseous mixture were classifiable under Heading No. 85.31.

9. After taking note of the functioning of the goods in question, we do not agree with the view taken by the learned Collector, Customs (Appeals). We set aside the same and restore the order-in-original passed by the Asstt. Collector, Customs, Air Cargo Complex, Bombay.

In view of the above discussions, the appeal filed by the Revenue is allowed. Ordered accordingly.