Collr. of C. Ex. Vs. Maharashtra Electronics Corpn.

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SooperKanoon Citation : sooperkanoon.com/13478

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-21-1998

Reported in : (1998)LC626Tri(Delhi)

Appellant : Collr. of C. Ex.

Respondent : Maharashtra Electronics Corpn.

Judgement :

1. The order passed by the Collector (Appeals) challenged in Appeal No.E/5464/91-A disposed of four appeals filed by the present respondent against four different orders passed by the Assistant Collector. The department has filed only one single appeal against the order passed by the Collector (Appeals). This is not regular as the department should have filed four appeals. We are therefore, treating this appeal as an appeal against the order allowing one of the appeals filed before Collector (Appeals) by the respondent and relating to file No. V-2(85) 321 /BI/ 90. Similarly the order passed by the Collector (Appeals) 54/791 disposed of two appeals filed by the present respondent against the two orders passed by the Superintendent on RT 12 return. The department has, however, filed a single appeal against this common order, we, therefore, treat this appeal as having been filed against the appellate order in so far as it related to the File No. B2(85).

2. Appellant, engaged in the manufacture of Ultra Portable Stereo Tape Recorder, was filing price lists from time to time and clearing the goods on payment of duty on the approved value. It was found subsequently that certain bought-out components and imported components were brought to the respondent's factory

and tested and supplied along with the Tape Recorder in single packet to the buyers. On this basis two monthly returns were assessed determining the duty payable on the total assessable value including the value of such bought-out and imported items. In respect of certain price lists filed by the respondent, orders were passed directing the value of such bought-out and imported items to be included in the assessable value of the Tape Recorder. These orders having been set aside by the Collector (Appeals), the department has filed the present appeal.

3. It was the stand of the respondent that the Tape Recorder manufactured by the respondent in the factory and supplied to the buyers was complete in itself and functioned as Tape Recorder and that the items purchased and imported were only accessories for improving the performance of the Tape Recorder. The respondent also contended that not all buyers were placing orders for these accessories and these accessories were procured and supplied only at the option of buyers.

The Collector (Appeals) accepted these contentions. In the two memoranda of appeals, it is stated that the bought-out items will be of no use unless they are used in conjunction with the product manufactured and supplied by the respondent, that optimum use of the product would be possible only if the accessories are used along with the product. As the bought out items were brought to the factory and subjected to test and sent in the same packet along with the manufactured product the department contended that the items should be treated as essential components of the Tape Recorder.

4. These bought-out items are stated to be separate headphone, microphone, carry bag (to keep the tape recorder) and windcheater (to protect the separate microphone). Considering the use of Tape Recorder and the use of these items, it is clear that the Tape Recorder can function as such even without these items. The reasons urged in the memoranda of appeal are not sufficient to hold that these items are component parts of Tape Recorder. That accessories would be of no use unless used with the main product would apply in all cases. The contention that optimum use of the product would be possible only if the accessories are used would clearly indicate that the Tape Recorder would be functional without these

accessories. That the accessories are packed along with the Tape Recorder does not have relevance In view of the above position we see no reason to interfere with the order-in-appeal and accordingly dismiss the appeal.