

Collector of Customs Vs. Industries Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-27-1998

Reported in : (1998)(103)ELT490TriDel

Appellant : Collector of Customs

Respondent : industries Ltd.

Judgement :

1.2 Respondents herein imported "Integrated Powder Diffractometer Basic Operational System." The said apparatus was based on X-ray used for examination of the crystalline structure as well as the chemical composition of materials. It is covered by Tariff Heading 90.22. The original authority denied the benefit of Notification No. 121 /92-Cus.

in respect of auxiliary duty leviable on the said apparatus. The respondents, however, succeeded before the lower appellate authority which has held as follows : "There is no necessity to restrict the benefit of notification to instruments falling under a particular Tarif Heading, when the notification and Table attached thereto allows instrun tents, falling under Chapter 90 of the Indian Customs Tariff. In determinin the scope and coverage of a notification, no doubt interpretation should be made on actual words used therein, but there is no necessity to unnecessarily restrict the scope of notification by introducing extraneous considerations. It was also held by the Tribunal in the matter of Escorts Ltd. v. Collector of Customs that concessional duty cannot be denied merely because the equipment in addition to its distinct purpose in the automotive industries, is also

usable for general purpose. It was also held that merely because a machinery could perform other functions benefit of exemption cannot be denied. The ratio of the above decision and others is equally applicable in the present appeal before me.

Therefore, I allow the impugned goods the benefit of exemption notification in respect of auxiliary duty under Notification 121/92 (Cus.)." It is against the aforesaid finding that the Revenue has filed this appeal before us.

2.1 Learned SDR, Shri A.K. Agarwal supporting the appeal of the Revenue submits that the apparatus in S. No. 45 of the Table to the Notification No. 121/92 (Cus.) reads as follows : "Electrical measuring, checking, analysing or automatically controlling instruments and apparatus." The Table shows that these apparatuses and instruments fall under Chapter 90. Further in the Explanation 6 to the said Notification the aforesaid expression in S.No. 45 to the Table has been defined as follows : "Electrical measuring, checking, analysing or automatically controlling instruments and apparatus means, (a) instruments of apparatus for measuring or checking electrical quantities; (b) machines, appliances, instruments or apparatus of a kind described in Heading Nos. 90.14, 90.15, 90.16, 90.17, 90.24, 90.25, 90.26, 90.27, 90.29 (other than stroboscopes), or 90.31, the operation of which depends on an electrical phenomenon which varies according to the factor to be ascertained or automatically controlled.

(c) instruments or apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or similar radiations; and (d) automatic regulators of electrical quantities, and instruments or apparatus for automatically controlling non-electrical quantities the operation of which depends on an electrical phenomenon varying according to the factor to be controlled." Shri Agarwal points out that the instrument does not merely measure X-ray intensities but it is meant for studying of the crystalline structure and the chemical composition of materials. Clause (c) of Explanation 6 to the notification corresponds to one of the entries in Heading 90.30. It is, therefore, contended that the meaning to be given to Clause (c) to Explanation 6 has to be confined only to the instruments and apparatus falling under Tariff Heading 90.30. Apparatus and instruments falling under Tariff

Heading 90.22 which is not disputed by the respondents as well will not be covered either by Clause (c) or any other clause to Explanation 6 to the notification. It is, therefore, submitted that the impugned order be set aside and the appeal of the Revenue be allowed.

3.1 As against the aforesaid contentions, learned Advocate, Shri L.P.Ashtana for the respondents has submitted that the imported apparatus falls under Tariff Heading 90.22 because it incorporates a radiation source i.e. an X-ray tube by utilising X-ray radiated from that source, the respondents utilised the apparatus for studying crystalline structure of the powder and chemical composition of various materials.

In order to carry out the aforesaid study, the instrument has to measure or detect inter alia, X-rays and therefore, he submits that the apparatus are fully covered by Clause (c) of Explanation 6. He submits that the Clause (c) does not mention that the instrument or apparatus for measuring, inter alia, X-ray that such instrument or apparatus should not incorporate a radiation source. Therefore, he submits that it will be unnecessarily restricting the scope of Clause (c) to Explanation 6 to Heading 92.30, unless an expression to the effect that such instrument or apparatus should not incorporate radiation source is occurring in the said clause of the Explanation. He, therefore, submits that there is no strength in the Revenue's case.

4.1 We have carefully considered the pleas advanced from both sides. We are inclined to agree with the submissions of the learned Advocate for the respondents. Clause (c) of Explanation 6 is fairly widely worded.

Apparatus and instrument mentioned thereunder may or may not incorporate radiation source. Simply because radiation source is included in the imported apparatus. It cannot be taken to mean that it will not be covered by Clause (c) of Explanation 6. Hence, we do not find any substance in Revenue's appeal. Consequently we dismiss the same.