

Commissioner of Customs Vs. Modi Xerox Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-11-1998

Reported in : (1999)(106)ELT224TriDel

Appellant : Commissioner of Customs

Respondent : Modi Xerox Ltd.

Judgement :

1. Two questions are involved in this appeal of the Revenue. (1) whether the console assembly, a part of the photocopier is classifiable under Tariff sub-heading 8537.10 as claimed by the respondents and upheld by the lower appellate authority. Revenue's contention is that it is classifiable under Tariff Heading 9009.90. (2) The refund claim filed in limitation of six months as stipulated under Section 27 of the Customs Act is hit by principles of unjust enrichment or not? The lower authority has held that it is not because the said principle had not been incorporated in the Customs Act at the relevant time. Hence this appeal by the Revenue.

2. We have heard Id. JDR. We have also heard Shri R. Nambirajan for the respondents. It is not disputed that heading is specifically mentioned in Tariff Heading 85.37 and in view of this and after applying the Clause (a) to Note 2 to Section XVI, read with Chapter Note 2(a) to Chapter 90, the said product/part would be rightly classified by the lower appellate authority under 85.37. Therefore, the Revenue's appeal based on application of Clause (b) to Note 2 of Section XVI is not correct inasmuch as that Clause (b) is to apply only on eliminating the

Clause (a).

3. As regards the Revenue's contention that benefit of refund has to be disallowed to the appellant only on the ground of unjust enrichment, we are of the view that this plea is also without substance for the reason that it has been held by Bombay High Court in the case of Solar Pesticides Ltd. reported in 1992 (57) E.L.T. 201 that said principle does not apply in respect of refunds on commodities which are captively consumed in manufacture of other commodity. The Revenue does not deny that the commodity in support of which refund has been allowed to the respondents by the lower appellate authority has been captively consumed in manufacture of photocopier. Therefore, this contention of the Revenue also fails. In short, the Revenue's appeal is dismissed.

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