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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Feb-16-1999

Reported in : (1999)(65)ECC622

Appellant : X-ray Diagnostic Centre

Respondent : Commissioner of Customs

Judgement :

1. This is an appeal against Order-in-Appeal No. 100/90, dated 25-9-1990 passed by Collector of Customs (Appeals) concerning the classification of a system consisting of Image Intensifier System, Ceiling Suspension and Adapter Plate. The said goods were assessed to duty under both Customs and Central Excise Tariff Heading 90.22. The Custom House issued a demand notice on 5-10-1987 proposing to classify the goods under 85.21 of the Customs Tariff and the Order-in-Original confirmed accordingly a differential duty of Rs. 3,80,295/-. The Order-in-Original has held that the goods are nothing but a TV Recorder or Reproducer and therefore, rightly assessable under 85.21 and hence it has upheld the Order-in-Original.

2. Heard Shri Arvind P. Datar, ld. Advocate for appellants assisted by Shri Mani Sunder, Advocate, who submitted that the goods imported would rightly be classifiable under 90.22 for the following reasons:- (a) The technical literature available on record clearly shows that this is a compact single case unit comprising of an Image Intensification System, a captively designed camera and monitor, etc. which can only work in conjunction with any X-Ray System for

medical purposes; (b) A number of affidavits of various Doctors and Radiologists have been submitted by the appellants to show that the said system cannot function independent of the X-Ray unit but would only function in conjunction with X-Ray unit and that the Image Intensification was necessary to see the human organ in X-Ray in other than a dark room, i.e. even in the operation theatre which otherwise is well-lit; (c) The issue is already covered by the decision of Tribunal in the case of CC v. Ramakrishna X-ray Institute as reported in 1996 (88) E.L.T. 265 (Tribunal) wherein it has been held that Image-Intensifier and Television System are classifiable under 90.22.

3. Heard Shri Sankaravadivelu, Ld. JDR who submits that the issue is highly complicated one as much as that under this scheme of classification under Customs Tariff Act, mere close circuit TV systems irrespective of the purpose for which they are used, would be classifiable under Chapter 85 rather than Chapter 90 unless they are imported as stated non-optional accessories of any other parent equipment which would be falling under Chapter 90. In this case, it is clear that no X-Ray machine has been imported and therefore, their classification under Chapter 85 proposed and upheld by Order-in-Appeal is correct. He further submitted that the monitor has even got accessories by which the results can be recorded in cine mode and played back. He therefore reiterates the findings in the Order-in-Appeal impugned.

4. We have carefully considered the rival submissions as well as the records of the case. We have also carefully perused the technical literature available on record. On a perusal thereof, we find that the system in fact consists of 3 special assemblies namely (a) The Image Intensifier Module, (b) The Specially designed Video Camera and (c) The Output Device namely Monitor. We also find that the catalogue makes it clear that in this equipment the Video camera is not one which is a general purpose video camera modified in this use, but instead, a specially designed unit which is encompassed in a single unit. Briefly, the signals from the X-ray machines are captured by the Image Intensifier system which intensifies the optical image thereof both the brightness of the image as well as the contrast and thereafter this intensified output becomes the input of the inbuilt camera where a suitably designed Vidicon accepts this X-Ray image sources and converts it into

electric signals which are then transferred as Radio Frequency Signals on to the Monitor screen which is placed at a convenient location in the operation theatre. The net result is that when the patient is exposed to low degree radiation through X-Ray tube, the resultant thereof is captured by the Image intensifier, and the intensified image is then routed through the Video system resulting in the Surgeon being able to see the results of the X-Ray even in a brightly lit operation theatre on the real time basis and with the aid of which he proceeds to conduct highly skillful medical operations on the operation table. Therefore, we find that it is not that only a closed circuit TV system consisting of a video camera and a monitor and resultant interfacing cable which has been imported. What has been imported is something more than that. It is an Image-intensifying system based on electrical micro processor and the video camera is coupled with this. The Image-intensifying system cannot accept any other source except an X-Ray image. Thus it would be difficult to hold that this is a normal Closed Circuit TV system. On the contrary, it is highly sophisticated medical equipment based on uses with even indigenously produced X-Ray machines. We also find that in view of this dedicated use of the system vis-a-vis the X-Ray machine, the Tribunal in the case of Ramakrishna X-ray Institute (Supra) had held the goods classifiable under 9022.90 instead of the Revenue's claim under 85.21.

While coming to this conclusion, the Tribunal had similarly analysed the catalogue as well as the principle on which the entire system operated. We find that the product imported in the present case is exactly the same as was dealt with in the case of Ramakrishna X-Ray Institute (supra). We further find that this decision was again followed by the Tribunal in the case of CC v. Medical College as reported in 1997 (22) RLT 485 CEGAT, where the importer was the Medical College.

5. In view of the aforesaid findings, we are of the considered opinion that the ratio of the above decisions are clearly applicable to the facts of this case. Respectfully applying the same, we set aside the Order-in-Appeal impugned and hold that the goods imported would be classifiable rightly under 90.22 for both the Customs Tariff Act as well as the Central Excise Tariff Act for purposes of countervailing duty. The appeal, therefore, succeeds with consequential relief, as per law.