

Collector of C. Ex. Vs. Peico Electronics and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-24-1999

Reported in : (1999)(65)ECC82

Appellant : Collector of C. Ex.

Respondent : Peico Electronics and

Judgement :

1. Question involved in this appeal filed by the Revenue is whether "Lead Glass Tubings and Rods" manufactured by the respondents herein are classifiable under Tariff Heading 7008.10 as contended by the respondents or under Tariff sub-heading 7001.90 as contended by the Revenue.
2. The Lower Appellate Authority has held that rods and tubings (unworked) are only covered under Tariff Heading 70.01. Therefore, in order to get classified under the said entry the rods and tubings should be unworked and not worked.
3. The process undertaken by the respondents after drawing through mandril, annealing, cutting glass tubings, are glazing and diameter sorting out to cutting of glass tubings. It cannot be said that the rods and tubings involved herein have been worked upon. Glazing and diameter sorting are the two extra processes that were undertaken by the respondents on the product under consideration. It has been held in some cases the process of siliconising is also undertaken by the respondents. Based on the above processes it has been held by the lower appellate authority that the product is not unworked and therefore, not classifiable

under Tariff Heading 7001.90. On the other hand the said authority has held that tariff sub-heading 7008.10 is more specific for the product under consideration because the predominant use of the product is as specified in that sub-heading and fluorescent lighting tubes. Against this finding of the lower appellate authority, Revenue has taken a plea on the basis of the Affidavit of the respondents' own Manager, Shri V.V. Gokhale which states that apart from using the said lead tubings and rods for electric lighting bulb and fluorescent light tubes, these are used for glows switches. But this switch according to the Id. Advocate for the respondents, is nothing but a type of bulb in that a bulb light up beneath glass cover. Glow switch glows like a bulb.

4. Revenue in support of Tariff Heading 7001.90 further states that the process of glazing and diameter sorting are not such processes as to cover within the definition of "working" of the tubes and rods and, therefore, it is contented by the Id. JDR for the Revenue that the correct Tariff Heading is 7001.90.

5. We have carefully considered the pleas advanced from both sides. We observe as found by the lower appellate authority that the tubing and rods herein go beyond the stage of annealing and cutting. Therefore, the finding given by the lower appellate authority that the 'tubes and rods' in the present case are not 'unworked', cannot be said to be unreasonable. As regards the reliance placed by the Revenue on the Affidavit of Shri V.V. Gokhale, Sr. Manager in the respondent's Co. we do not find anything objectionable in that. The glow switch, as mentioned by him, can also be considered to be electric bulb; at least not very materially different from the same and in any case, as pointed out by the Id. Advocate for the respondents, such a use of tubings and rods in glow switches is very minimal that is to the extent of 1 to 2%.

The general and predominant use of the goods in question is for electric light bulbs & fluorescent lighting. In view of the foregoing discussions we are of the view that the finding regarding classification by the lower appellate authority for the goods in question under Tariff Heading 7008.10 cannot be interfered with. Hence we dismiss Revenue's Appeal.