

Commissioner of Central Excise Vs. Rajkumar Engineers

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-20-1999

Reported in : (1999)(65)ECC574

Appellant : Commissioner of Central Excise

Respondent : Rajkumar Engineers

Judgement :

1. The short point involved in this appeal from Revenue is the classification of PCB Connectors of various sizes with wire and also without wire. The Assistant Collector classified PCB Connectors with wires under sub-headings 85.44 and without wire under sub-heading 8536.90. The Collector (Appeals) in the impugned order observed that the PCB Connectors with wires were meant for use in goods falling under Headings 85.19 to 85.21 as also Headings 85.22 to 85.28. He ruled them to be parts of the products mentioned in these headings and classified them respectively under Headings 85.22 and 85.29. As regards the PCB Connectors without wire he made the following observation : "The Assistant Collector did not clearly bring out as to how the PCB Connectors without wire classifiable under sub-heading 8536.90 are used as or for making connections to or in to an electrical circuit.

It appears that the Assistant Collector got confused with the expression 'circuit' under heading 85.36 with circuits falling under printed circuits with which the connectors are reported to be used.

In the absence of specific justification for the classification of the PCB connectors without wire under heading 8536.90, the classification is not maintainable." He classified such connectors without wire also as parts. Against this classification the revenue have filed the present appeal. Reliance has been placed on Section Note 2 (a) to Section XVI of the Schedule to the CETA, 1985. Reliance has also been placed on the description given in Heading 85.44 as well as heading 8536, Rule 3 interpretation of schedule has also been relied upon.

2. We have heard Shri K.M. Patwari, the Id. JDR and Shri V.S. Nankani the Id. Advocate for the assesseees.

3. The description in Headings 85.44 speaks of insulated wires fitted with connectors. This classification will hold, where the wire is sold as such. But where such wire fitted with connectors is made with a specific enduse in mind, that is where it is designed as part of a specific apparatus then its classification would be warranted under that sub-heading which is designed for inclusion of such parts. In the present case such wire connectors are used by people who make Tape-recorders or Television receivers. Shri Nankani cited the order of the Tribunal in the case of Delton Cable Ltd. v. Collector -1998 (98) E.L.T. 728 (Tribunal). In this case the Revenue had classified similar products under heading 85.44. The Tribunal observed that since quartz were used solely and principally as part of the telephone apparatus in terms of Section Note 2(b) of Section XVI, the classification attracted was under Headings 85.17 as electrical apparatus for line telephony or line telegraphy. The tariff did not provide a separate classification for such parts and therefore this heading was attracted. The present case is governed by Note 2(a) of the said section which states that those parts which are goods included in the permissible headings have to be classified in those headings. Headings No. 85.22 as well as 85.29 cover parts suitable for use solely or principally in certain apparatus. In terms of this note, and taking into account the cited judgement, we find that the Commissioner was right in classifying the PCB Connectors with wire under Headings 85.22 and 85.29.

4. As regards the PCB Connectors without wire we find that the Id.Commissioner has found fault with the Assistant Commissioner for the classification adopted by

him. However, the portion extracted above does not show the reason for the Id. Commissioner to accept the classification suggested by the assessee. We find both the lower orders deficient, in this respect. For purpose of classification, it is necessary to set out the physical attributes of the contested goods as also their specific function and utilisation in the kind of machine they are to be used in. In the absence of the background data, it is difficult to determine the classification. In our opinion, the Assistant Collector must go into this issue at length after giving to the assessee sufficient opportunity to place on record the technical submissions. As far as the classification of PCB Connectors without wire is concerned we set aside the Commissioner's order and remit the proceedings back to the Jurisdictional Assistant Commissioner, for de novo consideration.

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