

Aplab Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-30-1999

Reported in : (1999)(113)ELT652Tri(Mum.)bai

Appellant : Aplab Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. Applicants manufactured "Signal Generators". The classification of these goods was claimed under Heading 9031 of the CETA of 1985. The Assistant Commissioner approved this classification. On a revision application made by the Department the Collector (Appeals) vide his order dated 24-6-1994 ruled that the goods merited classification under Heading 8543. As regards claim of the assesseees that they deserved the benefit of Notification Nos. 51/93 and 46/94 the Collector directed the Assistant Commissioner to take a decision in de novo proceedings. Both the notifications prescribed the same condition for the exemption and i.e. that the goods sought to be exempted should be machinery used for the production of a commodity. During the pendency of the appeal before the Commissioner Show Cause Notice dated 3-3-1993 was issued seeking recovery of differential duty on re-classification of the product from Chapter 90 to Chapter 85. Three more Show Cause Notices were issued seeking recovery of differential duty on the ground that signal generators were not a machinery used for producing any commodity and that the benefit of the notification had wrongly been taken by the assesseees. The Assistant Commissioner passed a single order

on these four Show Cause Notices as also on the direction made by the Commissioner (Appeals) in his order dated 24-6-1995. The Assistant Commissioner summarised the issue before him in the following way : "They also submitted a synopsis where in they have stated that in their product there is not further production and hence they cannot avail benefit of Notifications 51/93 and 46/94, further stressing the technical features of signal generator of various types, they state that they are used for Audio applications, Laboratory equipments & defence applications and that they are of legal view that signal generators are checking and measuring instruments and therefore, fall under Chapter 9031.00" "They have agreed to the fact that their signal generator is same as described at page 1402 of HSN under Chapter 8543.00 also they state that their signal generator is not a machinery which can be used for production of a commodity, they also state that it is a checking and measuring instrument. From the above para it is seen that the assessee is giving contradictory statements. During the personal hearing Shri Gadkari stated that signal generator is "An apparatus for the production of electrical signals of known wave form and magnitude, at an assignable frequency (high or low frequency)." 2. The Assistant Commissioner held that the classification under 8543.00 was correct and denied the benefit of the cited notifications and confirmed the demand of Rs. 12,16,617/-. He further imposed a penalty of Rs. 1,25,000/- on the assessees.

3. The assessees then filed an appeal. The Commissioner (Appeals) observed that the issue of classification was decided in his earlier order dated June, 1994 and the issue was limited to only availment of benefits of the exemption notifications. He noted that the assessees before him had claimed classification of the contested products once again under 9031.00 and held that he was not competent at that stage to interfere with the issue of classification. On his upholding the lower orders, the present appeals are filed and the applications for stay of the duty confirmed and the penalty imposed have been made.

4. Shri Patankar, arguing the case of the appellants states that the issue of classification can be raised at any stage of the proceedings and that the Commissioner was wrong in holding that he was not competent to discuss the issue. He still maintains that the correct classification is under 90.31.

5. We have considered the submissions. We find that there is no claim that the assessee has contested the findings of the Commissioner in his order dated 24-6-1994. In fact even before the receipt of the order, they had voluntarily filed classification lists claiming classification under Chapter 8543 and also the benefit of notifications covering that particular Chapter heading alone. When they filed this classification list the order of the Assistant Commissioner accepting the classification under Chapter 90 had not been set aside by the Commissioner (Appeals). Before the Assistant Commissioner resulting the passing of the Order dated 19-11-1997, also as the extract shows, the assessee has accepted that their products fall under Heading 8543 and that the goods were not machinery for production of further goods. The attempt of the assessee to raise the issue before the Commissioner (Appeals) was wrong and on the same ground we would not like to consider it at this stage. As regards the financial hardship the stay application merely says that large sums of monies are owed from the various Govt. Departments. The hardship is sought to be highlighted on production of final accounts for the year 1997-98 which are out-dated to say the least. We, therefore, direct the assessee to deposit Rs. 6 lakhs towards the duty confirmed within 8 weeks of the receipt of the order. On such deposit being made the requirement of the pre-deposit of the remainder of the duty and of the penalty shall stand waived.

6. Assessee is free to make deposits either in the PLA or in the Modvat account. They are also free to deposit the amount in instalments provided such instalments are made before the scheduled period.

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