

Super Electronics Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-04-1999

Reported in : (2000)LC137Tri(Delhi)

Appellant : Super Electronics

Respondent : Commissioner of Central Excise

Judgement :

1.1 The appellants herein filed a classification list dated 22-7-1994 in respect of speakers mounted in wooden/plastic enclosure claiming classification under Tariff Heading 85.18 at nil rate of duty on the ground that conical speakers of Heading No. 85.18 are purchased by them on payment of duty. The said duty paid conical speakers are simply fitted inside wooden/plastic cabinet. Therefore, the product brought into existence by them by the aforesaid activity remains a speaker only and no new commodity comes into existence. The lower authorities have not accepted the aforesaid contention of the appellants and felt that they have undertaken a process of manufacture and brought into existence a new commodity mounted on plastic cabinets or which are described as speaker columns fixed with different types of speakers and joined together in a cabinet. Hence this appeal before us.

2. Learned Advocate Shri G. Shiv Das submits that the activity undertaken by them does not bring into existence any new commodity.

They purchased duty paid conical speakers. They simply mount two different types of speakers on the same plastic/wooden cabinet. In view of the description under Tariff Heading 85.18, namely "loud speakers, whether or not mounted in their enclosures" learned Advocate submits that no new activity of manufacture has been undertaken by them. This proposition of law, he submits is now settled by Supreme Court in the case of Prabhat Sound Studios v. C.C.E. reported in 1996 (88) E.L.T.635 wherein a similar tariff description, namely, "audio/cassettes whether recorded or not" came to be examined by the Apex Court. It was held by the Apex Court, submits the learned Advocate that duty paid blank cassettes when converted into recorded cassettes did not amount to manufacture in view of the Tariff description. He submits that a similar Tariff description, as set out above, exists in the present case. He, therefore, submits that the ratio of the Apex Court's judgment applies clearly in the facts and circumstances of this case.

Consequently, he prays for allowing the appeal.

3. Opposing the contentions, learned JDR, Shri Ravindra Babu submits that the appellants, no doubt, have purchased conical speakers after payment of appropriate duty but by the activity undertaken by them a new commodity comes into existence, namely column speakers. These column speakers, he submits enhances the musical quality inasmuch as they mount enclosure as two types of speakers which are called woofers and sub-woofers and are properly synchronised. Learned JDR also points out that the HSN makes a distinction between single loud speakers and multiple loud speakers. Single loud speakers mounted in their enclosures are covered by HSN sub-heading 8518.21 and multiple loud speaker mounted in the same enclosure are covered by Tariff sub-heading 8518.22. He, therefore, submits that in view of a new product having been brought into existence i.e. multiple loud speakers mounted in the same enclosure, a new product has come into existence according to the commercial parlance as reflected in the HSN sub-headings. He, therefore, submits, following the judgment of the Apex Court in Empire Industries 1985 (20) E.L.T. 179 (S.C.) the lower appellate authority has rightly held the activity of the appellants herein as involving the process of manufacture and therefore he prays that the appeal be dismissed. Learned JDR further submits that the judgment of Apex Court in Prabhat Sound

Studios, supra does not cover this case because the commodity in the present case is that of "speakers" whereas the commodity in the case before the Apex Court was of "magnetic tape". He, therefore, submits that reliance placed by the learned Advocate for the appellant on Prabhat Sound Studios is not correct. Learned JDR further submits that another distinction from Prabhat Sound Studios is that in that case it was the process of recording which was not held to be the process of manufacture but here it is a case of process of mounting the speakers and synchronising the two speakers. Therefore, the activity taken by the appellants is clearly an activity of manufacture.

4. In his rejoinder, learned Advocate, Shri G. Shiv Das submits that Central Excise Tariff is not fully aligned with the sub-headings of HSN although the Heading 85.18 is aligned. This itself gives out the intention that all types of speakers whether a single speaker or multiple speakers or any other type are to be charged to duty under the same classification and the mere mounting on different enclosures of different types of speakers would not amount to manufacture. He submits that Apex Court's judgment is fully applicable to the facts of this case although the commodity may be different but difference in commodity or difference in the process undertaken by the appellant and the process undertaken in the case before Apex Court does not make any difference because the scope of the expression "whether or not" has been examined by the Apex Court and that very expression is to be examined by the Bench in this case. He further submits that this judgment of the Apex Court M Prabhat Sound Studios has been followed by this Bench of the Tribunal (to which one of us was a party) in the case of C.C.E., Bombay v. Indian Hotels Co. 1999 (33) RLT 141. The commodity involved in that case was "chocolate in any form whether or not containing nuts, fruits, kernels." 5. We have carefully considered the pleas advanced from both sides. We agree with the submissions of the learned Advocate, Shri G. Shiv Das for the appellant. The Tariff Heading in the present case is similar to the Tariff Heading in the case of Prabhat Sounds Studios before the Apex Court. We are to examine the scope of expression "whether or not" in the present case as already examined by the Apex Court in that case and the effect of this expression is that if the speakers have been purchased after payment of appropriate duty, no further duty will be leviable on the speakers mounted in enclosures. Consequently, we set aside the impugned

order and allow the appeal.

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