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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-23-2000

Reported in : (2000)(69)ECC700

Appellant : Pcil Ltd.

Respondent : Commissioner of Customs

Judgement :

1. The dispute in this appeal relates to the classification of "SC 1000 ThermaCam IR Focal Plane Array Radiometer SN-17" imported by the appellant vide Bill of Entry No. 585053 dated 13-10-1997. The importers initially classified the items under Heading No. 9015.80. Subsequently they classified it under 9027.30. The assessing authority however classified it under heading No. 9006.59.

2. We have heard Shri L.P. Asthana, ld. Advocate for the appellants and Shri R.S. Sangia, ld. JDR for the respondent Commissioner.

3. Appellants contend that the authorities below have gone entirely by one part of the description of the item given in the product literature where in the word 'camera' has been used in describing one of the features of the item. The appellants' contention is that the capturing of images (as done in a camera) is only one of the features of the equipment, among many others. The disputed item was infact an instrument for measurement of temperature and analysis of thermal images by measuring the infra-red (IR) radiation. They have relied on the clarifications given by the manufacturer- exporter as well as other material in

support of their claim that the item is classifiable under heading No. 9027.30 of the Customs Tariff Act.

4. The Collector (Appeals) in the impugned order had observed that heading No. 90.27 covers instruments and apparatus for measuring or checking quantity of heat and as per explanatory notes certain such instruments have been categorised included under that category. On the other hand, heading 90.06 covers photographic cameras etc. The Commissioner (Appeals) had referred to the Bombay Customs House Tariff Public Notice dated 7-2-1997 which was based on the decision of Collectors-in-Conference under which infra-red radiation cameras such as Thermovision apparatus was held to be classifiable under heading 90.25 of the erstwhile Customs tariff which was identically worded and correspond to the present' Customs Tariff heading 90.27. He observed that Thermacam IR Radiometer was only an improved model of thermovision housing Infra Red Focal Plain Array Technology and therefore correctly classified under heading 90.27. Even the technical literature produced by the importers had stated that SC 1000 Thermocam IR offered unprecedented flexibility and it could operate as a stand-alone camera.

It could also function as a dedicated real time digital system when connected to therma-gram computer. He therefore, concluded that "it is basically a camera designed to provide thermal images of an automobile engine, thermal engine of PC brand or thermal image of heated seat design, etc. Thus Thermocan is basically a thermal camera based on infra-red radiation". He had further observed that since heading No.90.27 covers instrument and apparatus for measuring or checking, the quantity of heat, and as per Explanatory notes, certain such instruments have been categorised and thermocam housing thermal images by means of a video camera is not covered under the list, heading 9027 will not be applicable as thermal camera has not been specified therein. Further, Chapter Note heading did not give any indication that the heading would cover such types of cameras having additional software for measuring and recording temperatures. Therefore, one had to fall back on the principal function of the item irrespective of its usage in various forms. According to the Commissioner (Appeals), it was abundantly clear from the literature that the item was a highly sophisticated

camera, having measuring and monitoring facility because of software. Since it was essentially a camera producing thermal images with software and additional facility to measure and monitor temperatures and images it can at best be classified under 90.06 since the Chapter Notes did not specifically include cameras. On this reasoning he upheld the Order-in-Original passed by the Deputy Commissioner classifying the product under 9006.59 of the Customs Tariff Act, 1985.

5. Ld. Counsel for the appellants took us through the product literature filed as Annexure 11 (pages 30-33 of the Appeal Papers) wherein Thermocam SC 1000 has been described as "the one FPA IR system that makes thermacam analysis truly portable". He submits that it has been described as a breakthrough camera providing full screen radio metric measurement. The instrument was basically meant for accurately measuring temperature measurement through infra-red measurement system.

It had a very wide spectrum of applications and could be used for remote control operations and had also extensive post-processing software. One of the features given in the product catalogue was that the SC 1000 offers seamless integration of still images and video. The catalogue says, "Just drag and drop data from your analysis into an EXCEL spreadsheet or a 'Word' document. Instantly you have published your results or shared your data on the network", (vide page 31 of appeal papers). The product literature also explains some other features like "teamed with uniquely powerful Therma GRAM PRO image processing, the SC 1000 can help you document your measurements and analysis faster and more comprehensively than with any conventional IR measurement letter tool ...." (Page 31A).

Further, in the technical note furnished by the manufacturers in their Inframetrics(Annexure 14,) it has been stated that the Model SC 1000 is an infra-red (IR) radiometer and is based on a focal plane array FPA system. In such a system the FPA detector stares at the object and collects the radiant energy which can then be measured against a stored calibration. Reliance is placed on the definition as mentioned in the Photonoics Dictionary, defining a 'radiometer' as a device used to

measure the intensity of radiant energy and 'Radiometry' as the science of radiation measurement which is concerned with the detection and measurement of radiant energy either as separate wavelengths or as a combination of wavelengths. The main purpose of Model SC 1000 radiometer is the measurement of heat and thermal analysis which is done using the principle of infrared radiation. Appellants contend that it follows that to measure the temperature of a particular equipment/installation, there must be a provision to see/aim and that is why the view finder displays the thermal image which is actually the temperature distribution of the object under study. The Thermacam SC 1000 analyses this temperature distribution in the object under study and automatically, or through a user - guided interface, makes accurate measurements of the object. This is used extensively in the power utility sector for detection of over heating in connectors /switches and other installations to determine their healthiness and condition.

Reliance was also placed on letter dated 10-2-1998 from Mr. Allen J.Frechette, the International Sales Engineer of the foreign manufacturers addressed to the Customs Officials in India (Annexure 6 at page 22) wherein he has observed "Understandably, by reading the product documentation it is easy to be caught up in semantics. Calling the system a "camera" is a misnomer and is not in any way indicative of what the system does or is used for". He had also given reasons for not classifying infra-red focal plain rods meters as photographic cameras (Annexure 6 page 22) indicating that Thermocam System does not use films or flash lamps or give a print out.

6. Ld. Counsel therefore, submits that there was enough technical evidence to support appellants' contention that the disputed item would be classifiable under Customs Tariff Heading 90.27 and for consequential relief.

8. We have considered the submissions and have gone through the material relied upon by the respondents.

9. On a careful consideration of the Technical Literature filed by the appellants and referred to in their submissions, we are of the view that the item under dispute would be more appropriately classifiable under Chapter Heading 9027.30 under 'Spectrometers, Spectrophotometers and Spectrographs using optical radiations

(UV, visible IR)'. We find that the letter dated 10-2-1998 written by the International Sales Engineer of the foreign manufacturers (referred to at Para 5 above) clinches the issue inasmuch as the said Engineer has clearly brought out the reasons for not considering the item as a Camera. In fact, he has stated that calling the system a 'Camera' would be a misnomer. He has drawn attention to the fact that the Thermacham system does not use films or flash lamps to give a print out as in the case of a normal Camera.

10. In the above view of the matter, the Appeal suceeds. Accordingly, we uphold the classification of 'SC 1000 Thermacham IR Focal Plane Array Radiometer SN-17' under Chapter Heading 9027.30 of the Customs Tariff Act, 1975.