

Vinitec Electronics Laboratory Vs. Commr. of C. Ex.

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SooperKanoon Citation : sooperkanoon.com/18161

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-02-2000

Reported in : (2000)(121)ELT412TriDel

Appellant : Vinitec Electronics Laboratory

Respondent : Commr. of C. Ex.

Judgement :

1. The common issue arising for determination in these appeals is the classification of UPS systems manufactured by the appellants herein.

The Revenue authorities have classified the goods under CET Chapter heading 8543 as against the assessee's claim for classification as Static convertors under Chapter heading 8504 and as a result of classification under Chapter heading 8543, demands have been confirmed on clearances during the period from July, 1995 to July, 1996.

2.1. We have heard Shri Naveen Mullick, learned Advocate and Shri Ashok Kumar, learned DR. The appellants have filed two Misc. applications.

The prayer in E/M/10/2000-B is for permission to raising the following additional grounds of appeal: "The classification lists of the appellants filed till the year 1994-95 including classification lists w.e.f. 1-4-1995 had already been approved by the proper officer by classifying UPSS under heading No. 85.04. While filing their classification declaration w.e.f. 1-5-1995, it was again claimed under 85.04 in

respect of UPSS and thereby also claiming the small scale exemption provided under Notification No. 1/93, dated 28-2-1993 as amended. There has been no objection on the part of the Department/Proper officer in appellants clearing UPSS under Heading No. 85.04 by paying the duty as per classification declaration.

The proposal for change of classification was mooted by issuance of show cause notice dated 2-2-1996 and 22-10-1996. Since the clearances were being effected by the approval of the Department, duly also covered by the instructions of the Central Board of Excise & Customs, it has to be appreciated that there existed on record the due approval on classifying the goods under heading No. 85.04. The demand of duty as raised for a period of six months therefore, cannot be sustained.

The instructions of the Board for classifying UPSS under Heading No. 85.43 were revised through Circular No. 25/96-Cus. (F. No. 528/1 /96-Cus. (TV). On the basis of such a circular dated 24-4-1996, the demand, if any, could only have been raised subsequent to the issuance of the revised circular. Accordingly, at least the demand raised till 24-4-1996 needs to be quashed.

While it is correct that provisions with regard to approval of the classification lists was withdrawn during the year 1995-96, but each case has to be decided on the basis of the facts of such case. In the case of the appellants, the approval on the classification lists referred above was continuing, of course under the cover of the Board Circular issued as early as in the year 1990, when it was changed by the Board by issuing the circular dated 24-4-1996. Where the highest body of the Department had maintained classification under heading 85.04 till 24-4-1996, it is quite obvious that necessary approval of the Department was there to assess such goods under heading 85.04. The demand, if any, could only be raised at least for a period subsequent to Board's circular dated 24-4-1996. It has already been held by the Apex Court that instructions of the Board are binding on the Department and it is not open for the Department to plead against such instructions." 2.2. The prayer is opposed by the learned DR on the ground that w.e.f.

1-5-1995 declaration was filed by the assesseees and not a classification list and therefore, the clearances after 1-5-1995 were not on the basis of an approved

classification list. We agree with the learned DR's submissions and hence reject this Misc. application.

3. E/Misc. 47/2000 has been filed for permission to bring on record additional document namely opinion dated 25-4-2000 from the Ministry of Information and Technology that UPS system is a static convertor. We find that the information was sought by the appellants only on 2-3-2000 i.e. well after the adjudication and filing of the appeal and there is no explanation from the appellants as to why any expert opinion was not obtained at the time of adjudication and further the information cannot be allowed to be brought on record in view of the Larger Bench decision in the case of Tata Liebert Ltd. We therefore, reject this Misc.

application also.

4. We find that the classification issue has been decided by the Larger Bench of the Tribunal in the case of Tata Liebert Ltd. and Ors. v.C.C.E. Bombay and Anr. [1999 (35) RLT 933] wherein the Tribunal has upheld classification under Chapter heading 8543. The learned Counsel seeks to distinguish this decision by explaining why the points of dissimilarity between static convertors and UPS system drawn by the Bench in para 9 of its order, are not valid. One of the objections of the assesseees is that while the Tribunal has held that a static convertor is one which converts AC power to DC power, actually a static convertor is much more than that, as seen from HSN Explanatory notes at page 85 which states that Electrical Static convertors includes (a) Rectifiers and (b) Invertors by which DC is converted into AC, etc. The second objection is that battery is generally a part of UPS but sometimes UPS is sold without battery also. The assesseees also point out that some of the UPS systems do not have a transfer or By-pass switch while this Tribunal has noted that UPS system have transfer /by-pass switch. We however, do not see any force in the submissions.

The Tribunal has considered all aspects including HSN Explanatory notes and Board's circular while coming to the conclusion that UPS system are something more than static convertors which are classifiable under Chapter heading 85.04. Following the ratio of the Larger Bench decision (supra), which is directly applicable to the present case we uphold the classification of the goods under

Chapter 85.43.

5. The next plea of the assesseees is that the demand for the period July to December 1995 raised in the show cause notice dated 31-1-1996 cannot be sustained in view of the fact that the notice does not contain any proposal to change the classification of the goods and proposal for modification was made only in the show cause notice dated 21-5-1996 covering the demand for the period January to April 1996.

This plea is not tenable since the show cause notice clearly puts the assesseees on notice that the goods fall for classification under Chapter heading 85.43 instead of under heading 85.04 shown by the assesseees in their declaration and therefore, we hold that the demand for the period July to December 1995 is sustainable.

6. The next contention of the assessee is that the demand can operate only w.e.f. 24-4-1996 when Board circular was issued regarding classification of UPS system under Chapter Heading 85.43, in view of the Tribunal's judgment in the case of J.K. Synthetic Ltd. v. C.C.E., Jaipur [1985 (80) E.L.T. 208]. This plea is also not tenable in view of the fact that show cause notices have been issued within the normal period of limitation and therefore, the demands are Required to be sustained.

7. Reliance by the learned Counsel on the decision by the Apex Court in the case of C.C.E. v. Oriental Timber Industries [1985 (20) E.L.T. 202 (S.G)] is also misplaced. In that case, the Supreme Court held that levy of duty should be prospective from the date of the judgment and not retrospective. The Court did so in the peculiar circumstances of that case by holding that fresh assessment for levy of duty for many years after a long lapse of time is bound to cause harassment to the Respondent firm and the Court also noted that the Counsel for the Union of India fairly agreed that the Government was not concerned with the collection of additional duty for the past from the Respondents but was only concerned with the question of law involved. In the present case however, the demands have been raised within the period of six months from the relevant date and the appellants Counsel does not dispute that duty demand can be raised within the six months period. We, therefore, hold that the demands are valid.

