

Collector of Central Excise Vs. Elektromag Methods

Collector of Central Excise Vs. Elektromag Methods

SooperKanoon Citation : sooperkanoon.com/18663

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-13-2000

Reported in : (2000)(121)ELT396TriDel

Appellant : Collector of Central Excise

Respondent : Elektromag Methods

Judgement :

1. In these four appeals 3 preferred by Revenue and one filed by M/s.

Elektromag Methods - arising out of three Orders-in-Appeal passed by the Collector, Central Excise (Appeals), Bombay, the issue involved is the classification of various products under the schedule to the Central Excise Tariff Act. Accordingly, all these appeals are being disposed of by one Common Order.

2. We heard Shri M.P. Singh, learned DR, and Shri Gopal Prasad, learned Advocate. Their submissions on the question of classification of each product involved and our findings are as under : 3.1 M/s. Elektromag methods have classified Cable drag chain under Heading 84.66 of CETA whereas the Assistant Collector classified the same under Heading No. 73.15 of the Tariff. The Collector (Appeals) under Order dt. 31-1-1992 had classified the same under Heading 84.66 since they were parts suitable for use solely or principally with the machines of Heading Nos. 84.56 to 84.65 holding that these chains were used in computerised numerical control lathe machine, that these were used to convey flexible cables/hoses, etc., to moveable units with maximum reliability and these are made

of steel as well as of moulded plastics.

3.2 The learned DR submitted that Heading 73.15 covers Chain & Parts thereof of iron and steel; that these are being manufactured and supplied as such and are parts of general use rightly classifiable under Heading 73.15; that the Collector (Appeals) under Order dated 19-10-1992, had classified them under Heading 73.15 holding that according to HSN Explanatory Notes Heading 73.15 covers chains of cast irons regardless of their intended use; that these chains could not be considered to be spare parts solely or principally used with the machines of Headings 84.56 to 84.65. The learned Advocate for the assessee reiterates the findings of the Collector (Appeals) under Order No. 31-1-1992.

3.3 Note 2(b) to Section XVI of the Tariff provides that subject to Note 1, parts, if suitable for use solely or principally with a particular kind of machine, are to be classified with the machines of that kind. However Note I(g) to Section XVI provides that the Section does not cover "Parts of general use, as defined in Note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (chapter 39)." As per Note 2 to Section XV, the expression "parts of general use means articles of heading No., inter alia, 73.15. This Heading covers "chain and parts thereof, of iron or steel." Apparently Cable drag chain will be classifiable under Heading 73.15 and not under Heading 84.66 unless and until it is proved that this is a part "suitable for use solely or principally" with machines falling under Headings 84.56 to 84.65 of the Tariff. We observe that these chains are used to convey flexible cables/hoses, etc. to machine tools. Nothing has been brought on record to prove that these chains are parts suitable for use solely or principally with machines falling under Heading Nos. 84.56 to 84.65.

The Collector (Appeals) has merely gone with their use with N. C. Vertical boring and turning machine, Machining centre in Order dated 31-1-1992 and also with the fact that these chains are made of plastics for same purpose. There is no material to suggest that these chains are parts solely and principally of these machines. Considering their use of conveying cables/hoses to machine tools they cannot be considered as parts of computerised numerical control lathe machine. Similar views were expressed by the Tribunal in the case of Hindustan Aeronautics Ltd. v.

C.C., Madras, 1986 (25) E.L.T. 199 (T), relied upon by Id. DR. In that case, classification of chains imported for jig boring and milling machines was ruled out under Heading 84.45/48 of the Customs Tariff. Accordingly these cable drag chains are classifiable under Heading 73.15 of the Tariff in view of Note I(g) to Section XVI. Accordingly cable drag chain link and spare parts thereof will also be classifiable under Heading 73.15.

4.1 The Assistant Collector classified the limit switch under Heading 84.31 of the Tariff as against sub-heading 8536.90 claimed by the assessee, holding it as a part suitable for use solely or principally with machinery of Headings 84.25 to 84.30. The Collector (Appeals) had classified the same under sub-heading 8536.90 holding that it is protective switch which automatically disconnects the power supply when it is activated; that limit switches are electrical switches used in a wide variety of machinery and in order to ensure safety, it is necessary to disconnect the power supply.

4.2 The learned DR contended that limit switches, manufactured by the assessee are used exclusively in lifting, loading/handling equipment falling under Headings 84.25 to 84.29 and performs diverse function like controlling over travel, over transverse, hoisting, lowering etc.

that the basic function of such device is to protect the trolley/crane from over travel; that switches classifiable under 8536.90 perform the basic function of 'on-off' an electric circuit and hence these switches in question are classifiable under Heading 84.31.

4.3 The learned Advocate, on the other hand, submitted that Collectors (Appeal) have classified the limit switches under Heading 85.36 as this Heading covers electrical apparatus for switching or protecting electrical circuits; that, further, according to McGraw Hill Dictionary of Scientific and Technical Terms, limit switch is "A switch designed to cut off power automatically at or near the limit of travel of a moving object controlled by electrical means"; that it is apparent from this definition that limit switches are classifiable under Heading 85.36 only.

4.4. We find substantial force in the submissions made by the learned Advocate. Heading 85.36 covers "Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example switches, relays fuses---) for a Voltage not exceeding 1,000 Volts". It is not disputed by the revenue that these switches perform the function of switching or protecting electrical circuits and only by cutting the electrical connections they protect the trolley or chain from over travel. This is also evident from the definition of limit switch given in McGraw Hill Dictionary. In terms of Note 2(a) to Section XVI, Limit Switch is to be classified under Heading 85.36 as this is included in one of the headings of Chapter 84 or 85 and cannot be classified along with the machine in terms of Note 2(b) to Section XVI.5.1 The conflicting Headings in respect of AC/DC Solenoids are 85.43 as confirmed by the Collector (Appeals) and 85.05 as sought by the Department. The Learned DR submitted that AC/DC solenoids are parts of electric magnetic breaks and will be rightly classifiable under Heading 85.05 in terms of Note 2(b) to Section XVI.5.2 The learned Advocate mentioned that, as held by the Collector (Appeals), the impugned solenoids are electric magnetic devices for controlling mechanical, hydraulic or pneumatic breaks; that they are independent appliance and are not parts; that Heading 84.43 covers electrical machines and apparatus, having individual functions, not specified or included elsewhere and as solenoids have independent functions they are classifiable under Heading 85.43; that as per HSN Explanatory Notes, Heading 85.05 does not cover electro magnetic devices for controlling mechanical, hydraulic or pneumatic breaks. He also relied upon the decision in Automac (Madras) P. Ltd. v. CCE, 1993 (68) E.L.T. 854 (T) wherein the solenoids, used as essential part of various types of valves and not used directly as machine parts were classified under sub-headings 8481.91 and 8481.99.

5.3 We observe that the Collector (Appeals) in impugned Order dt.

31-1-1992 has given a specific finding, after seeing the write up on the electro-mag solenoid, that these are used in any equipment requiring a definite pull or thrust motion and the function includes the operation of electromechanical breaks and valves, various short stroke motion or machine tools. He has also mentioned, in the impugned Order, that the Assessee had submitted that AC/DC solenoids

were devices for controlling mechanical, hydraulic or pneumatic breaks. This has not been rebutted by the Revenue. As per Explanatory Notes of HSN below Heading 85.05, "the heading does not, however, cover mechanical, hydraulic or pneumatic breaks controlled by electromagnetic devices." In view of this AC/DC solenoids in question cannot be classified under Heading 85.05 of CETA. The finding of the Collector (Appeals) is not to be interfered in respect of this product.

6.1 The learned DR submitted that in view of Note 2(b) to Section XVI, all these products are to be classified under Heading 84.31; that these goods are designed for heavy duty application in steel mills, cranes, shovels, i.e. material handling equipment; that these goods being parts used solely or principally with material handling equipments falling under Heading Nos. 84.25 to 84.30, these are to be classified under Heading 84.31.

6.2 On the other hand, the learned Advocate submitted that master controllers have either single break contracts or double break contracts and come in metal housing with operating handle and are used for cutting out resistance to the motor for speed control; that as their principal function is electrical and not of material handling equipment, these are classifiable under Heading 85.43. He finally referred to McGraw Hill Dictionary according to which drum controller is 'an electric device that has a drum switch for its main switching element; used to govern the way electric power is delivered to a motor.' Similarly contractor is "A heavy duty relay used to control electric power circuits. Also known as electric contactor". He contended that these goods are not part of the material handling equipment.

6.3 We have considered the submissions of both the sides. From the definition given in McGraw Hill Dictionary, it appears that these goods are used for making connection to or in electrical circuits. The Collector (Appeals) in the impugned Order dated 19-10-1992, also observed that these goods appear to be used, as per the Assessee's own description, as a switch to make or break a circuit and 'contractors' figure with description of 'relays' in the Explanatory Notes of HSN. It is mentioned in HSN that "Contractors which are also considered as relays, are devices for making and breaking electrical circuits, which automatically reset without a mechanical locking device or hand operation." Revenue has not

explained as to how these goods are parts of material handling equipment except contending that these are designed for heavy duty application. The Revenue has also not described the functions performed by these goods in question. In absence of complete material and the fact that these goods may appropriately fall under Heading either 85.35 or 85.36, depending upon voltage, we remand this matter regarding their appropriate classification to the jurisdictional Assistant Commissioner. He will determine the proper classification after examining the functions performed by these goods and also after following principles of natural justice. Both the Assessee and Revenue are at liberty to adduce technical literature or other relevant material before the Assistant Commissioner. Similarly the issue regarding classification of spare parts for master controller, drum controllers and DC contractor is also remanded to the jurisdictional Assistant Commissioner.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com