Stellar Modular Systems (P) Ltd. Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-04-2001

Reported in : (2001)(130)ELT817Tri(Mum.)bai

Appellant : Stellar Modular Systems (P) Ltd.

Respondent : Collector of C. Ex.

Judgement :

1. These appeals involve a classification dispute. The jurisdictional Assistant Collector had, in adjudication of three classification lists filed by the assessees claiming classification of racks and cabinets under chapter Heading 85.38 of the Central Excise Tariff, approved classification as claimed by them. The jurisdictional Collector sought to review the classification and accordingly appeals were filed by the department before the Collector (Appeals). The Collector (Appeals) set aside the Assistant Collector's orders and held that the aforesaid products were correctly classifiable under chapter Heading 94.03. Hence the present appeals of the assessees, before us.

2. The products in question are racks, cabinets, card frames etc. The appellants claim that these products were specially designed in accordance with the Indian Standard Specifications for being used for housing electronic systems and that the said items were not suitable for any other purpose. They submit that the racks, cabinets etc.

manufactured by them were solely used as parts of apparatus classifiable under chapter Headings 85.35,85.36 or 85.37 and therefore such racks, cabinets etc. were appropriately classifiable under chapter Heading 85.38. This plea was rejected by the lower appellate authority, which held that the goods could not be considered as parts of electronic systems. According to the said authority, they were more in the nature of furniture as they were designed for placing on the floor or on the ground. Learned Collector (Appeals) therefore classified the products under chapter 94. In this connection, he also relied on the assessees' admission that the metal enclosures were used to house computer and other electronic instruments. Learned Collector (Appeals) took the decision after considering in detail the provisions of chapter Headings 85.35 to 85.38.

3. We have heard both sides. Learned Advocate, Ms. Shilpa Pandey, for the appellants produces before us the manufacturers' catalogue of the items in question and submits that the catalogue would clearly establish that the metal enclosures manufactured by the appellants were specially designed for electronic apparatus and for no other purpose.

She further submits that chapter 94 is meant for furniture and that the appellants' products cannot be considered to be furniture as known in common parlance. Learned counsel has, fairly, drawn our attention to a decision of the Tribunal's Bench at New Delhi in the present appellants' own case and has submitted that the decision of that Bench on identical issue has gone in favour of the Revenue and further that no appeal has been filed against the said decision contained in Final Order Nos. 190-192/2000-B, dated 4-2-2000 [2000 (124) E.L.T. 536 (Tribunal)]. The decision of the Delhi Bench ruling out classification of the products under chapter Heading 85.38 was on the ground that the appellants had not adduced any evidence to show that the products were parts of the goods classifiable under chapter Headings 85.35,85.36 or 8537. Learned counsel, in this connection, prays for time so that the appellants will be able to adduce evidence to show that the cabinets and racks manufactured by them during the relevant period were parts, of the goods falling under the aforementioned chapter Headings. Learned SDR has opposed this prayer. We note that the Delhi Bench rendered its decision against the assessees as early as on 4-2-2000 and that more than 10 months have elapsed since then, but the appellants in the instant cases did not take any steps for adducing further evidence in support of their claim for classification of the goods under chapter Heading 85.38. Moreover, these appeals have already remained pending for five years. Any permission to adduce additional evidence at the second appellate stage will not be given, unless extraordinary reasons are shown to the satisfaction of the Tribunal. There is no application stating any reason whatsoever before us. We, therefore, reject the request of the learned counsel for grant of time for adducing further evidence.

4. The issue settled by the Delhi Bench of the Tribunal is identical with the one before us. That Bench has decided the issue against the assessees on the specific ground that they had not proved that the products in question were parts of the various apparatus/articles falling under chapter Headings 85.35,85.36 or 85.37. Exactly the same situation exists in the instant cases too. The appellants have not been able to show that the cabinets and racks manufactured by them during the relevant period were parts of electronic apparatus classifiable under chapter Headings 85.35, 85.36 or 85.37. It is conceded by the counsel before us that the appellants were not manufacturing any of such apparatus during the relevant time. They were manufacturing only racks and cabinets and clearing the same to other manufacturers who manufactured the electrical apparatus classifiable under the aforesaid tariff Headings. In order that the racks and cabinets have to be classified under chapter Heading 85.38, which covers parts suitable for use solely or principally with the apparatus of the Headings 85.35, 85.36 or 85.37, it is indispensable that the assessees should show that the apparatus, for housing which the racks and cabinets were designed and manufactured, -were classifiable under chapter Headings 85.35, 85.36 or 85.37. This was not done by the appellants in this case and this was, precisely, not done by them in the case before the Delhi Bench, as we understand from the order of that Bench. In the circumstances, we have no option but to follow the decision of the Delhi Bench contained in Final Order Nos. 190-192/2000-B dated 4-2-2000. Accordingly, we do not find any merits in these appeals and hence we reject the same.