Bhel Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : May-21-2001

Reported in : (2001)(133)ELT648Tri(Chennai)

Appellant : Bhel

Respondent : Commissioner of Central Excise

Advocate for Pet/Ap. : Shri. M. Narayanaswamy

Judgement :

1. Appellants are a PSU who have challenged the reclassification of the three items by the Commissioner (Appeals) as detailed below :--Item Classified by AC Reclassified by Commissioner (A)--(1) Simulator 85.37 85.43(2) Boiler Simulator and 85.37 85.43 Spares(3) Sub-station supervisory 90.30 85.37 system 2. Revenue's contention is for classifying the first two items under 85.43 and third item under 85.37 on the ground that the items have got individual function. Appellants' plea in respect of the above two items was that they are not individual machines but it is an 'off line training device' to acquaint the trainee with the real life situations, and therefore they cannot be considered as individual machines for the purpose of classification under Chapter 85.

3. Ld. Advocate Shri M. Narayanaswamy appearing for the appellants submits that in respect of the above first two items the Tribunal has considered the case in the

case of PMT Machines Tool and Automatics Ltd. v. CC, Bombay -1997 (92) E.L.T. 226 and negatived the Revenue's contention for classification under Chapter Heading 85.37 and held that where an equipment used for the purpose of training, it has to be classified under Chapter 90.23. He submits that this judgement clearly applies to the facts of this case and it has to be applied. With regard to the third item, namely sub-station supervisory system, he submits that AC has rightly classified the item under Chapter 90.30 and it was checking and measuring instrument or an apparatus and it was not boards or panels. Appellants had also produced technical literature besides technical opinion from experts to show that the item cannot be used for control without operator's interaction and primarily it is for measuring electrical quality. The Commissioner (Appeals) has ignored the technical literature which was on record which had been examined by the AC also and therefore the order classifying it as boards and panels under 85.37 is required to be set aside, and the classification under 90.30 as measuring instrument is required to be upheld in the light of literature and expert opinion produced.

4. Ld. SDR Shri G.S. Menon defends the order and submits that simulator, boiler simulator and spares have got individual function and therefore the Commissioner has rightly rejected their plea although there is no dispute about the use as measuring instrument as recorded in the order. With regard to the third item, he submits that Commissioner has noted that it is a system which enables the operator to continuously monitor the events connected in the electric supply and distribution to and from a sub-station. It is basically an instrumentation panel through which all factors are controlled in which checking and measuring instrument are incorporated. He has also noted that simply because such instruments are incorporated, it cannot be classified under Chapter sub-heading 90.30 and therefore classification under 85.37 as boards and panels etc. is a correct classification.

5. On careful consideration of the submissions and on perusal of the enormous records and the evidence, we notice that in respect of first two items the issue is clearly covered by the judgement rendered in the case of PMT Machines Tool and Automatics Ltd. wherein the Tribunal in paras 4 & 5 on the similar situation and similar product have clearly held that it has to be classified only under 90.23. The

findings recorded in paras 4 & 5 of the said judgment are reproduced below :- 4. We have heard both sides. On going through the order of the Asstt. Collector, it is seen that he has himself admitted that the goods are also capable of producing simulating effect of normal operation of machine tools. He has also recorded the contention of the importer as to why the essential parts of CNC machine tools namely, Thyristor Controller, servomotor, position feedback units, Rotary converter are not present on the simulator as these are not required since there is no actual operation taking place on a work piece or any movement of the tool bits. The relevant part of the para of Asstt. Controller's order is reproduced below : "The goods under import are undoubtedly for theoretical, practical and advanced training. However, it is also relevant to note that the subject Simulator may be through a proper interface can be connected to the machine tools and can be operated as a normal control panel of a CNC system as seen from the users Manual PC of TRAUB CNC Turning machine TND 560 with TX-8D control panel. And also in the normal CNC systems the operations to be carried on a work piece are programmed and these operations can be visualised on the monitor of the CNC Control panel and are controlled from the CNC Control Panel.

In the case of simulator the function is similar to that of the CNC control panel wherein the operations that are to be carried on a work piece or programmed and controlled through the CNC control panel which is similar to the CNC control panel of normal CNC systems. In the case of Simulator the only difference is that there is no work piece on which the operations are carried out. The Simulator simulates these conditions through the additional hardware and software on the CNC control panel of the simulator as if the operations are carried on an actual work piece. This explains the contentions of the importer as to why the essential parts of the CNC machine tools namely Thyristor Controller, servomotor, position feedback units, Rotary convertor are not present on the simulator since these are not required as there is no actual operation taking place on a work piece or any movement of the tool bits. Thus the Simulator facilities hands on experience to the learners without any wastage of the work pieces and the associated costs of tool bits.

Hence this is more in the nature of control panel of a CNC system which is also capable of producing simulating effect of normal operation of machine tools".

It was contended before Collector (Appeals) that the Simulator does not have drives, motors, feedback elements etc. Explaining the difference between the simulator and CNC system, the appellants contended that even though the panel looks like CNC there are fundamental differences. There is a push button on the CNC as well as on the Simulator for swarf conveyor. Associated with this is a light emitting diode on the control panel. In case of the simulator the moment we press the push button it makes the light emitting diode glow indicating that the swarf conveyor is working though there is no swarf conveyor at all. The operator is taught that if he wants the swarf conveyor to start, he must press the push button and as soon as the motor of the swarf conveyor will start, the diode will glow. Even though to the trainee the panel looks the same, the working is totally different. In the Simulator the push button actuates the diode. In the CNC the push button acts as a signal to the CNC. The CNC sends a signal to the Programmable Logic Controller (PLC). The PLC operates a relay to start the motor and makes the diode glow. If we were to put the panel of the Simulator on the CNC, pushing the button will never start the swarf conveyor but the diode will glow. This is because there is no signal between the push button and CNC and PLC and relay. They therefore, negative the argument of the Asstt. Collector that by connecting the Simulator to the machine by interfacing as stated by the AC, one cannot make the machine work. We also note that Asstt. Collector himself admitted that Controller servomotor, position feedback units, Rotary convertor are not present in the simulator. We also note that the absence of these, because these are not required as there is no actual operation taking place on a work piece or any movement of the tool bits. This explains that even though the panel may look similar there are essential differences between the simulator and actual panel.

5. Mere fact that by adding some essential parts, it can be used as control panel is not relevant. Heading 90.23 states unsuitable for "other use". We have to see whether the impugned goods as imported as such and presented for assessment are suitable for other use.

Considering the differences between simulator and the control panel and admitted position that essential parts are not present, it has to be held that simulator in the form in which it was imported, was not suitable for other purposes.

6. In view of this, we set aside the impugned order and allow the appeal.

6. In view of the above judgment, reclassification adopted by the Commissioner under Chapter Heading 85.43 and 85.37 is set aside and the appellant's claim for classification under 90.23 is upheld in so far as the above first two items are concerned.

7. With regard to classification of sub-station supervisory systems, the appellants produced technical literature as well as experts opinion to show that module cannot be used for control without operator's interaction and it is primarily used for measuring electrical quality.

They have produced expert's opinion also including technical literature and write-ups. This has been ignored by the Commissioner (Appeals) and on his own taken a view that the item is required to be considered as boards and panels. In the light of technical literature, which was examined by the AC, it cannot be said that item is board or panel, but we have to accept the technical literature as opinion given by the expert that the item is primarily for measuring electrical qualities.

Such measuring instrument is falling under Chapter Heading 90.30 which has got a specific chapter heading. In that view of the matter, the appeal to this extent is sustainable and the classification adopted by AC has to be reaffirmed. In that view of the matter, the Commissioner (A) order is set aside, the appeal allowed.