

M/S Perfect Electric Concern Pvt. Vs. Commr. of Central Excise, Patna

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Jul-05-2001

Appellant : M/S Perfect Electric Concern Pvt.

Respondent : Commr. of Central Excise, Patna

Judgement :

1. On matter being called, Shri K.Basu, Branch In-Charge of the appellants' Company appears and seeks adjournment on the ground that their Advocate has gone to U.K.. However, we find that the matter was earlier listed for hearing on 22nd May, 2001 when nobody appeared and the interest of justice, the same was adjourned to today with direction to the appellants to make alternative arrangement for causing appearance. In spite of that, the appellants have not done anything. We also note that the disputed issue is already covered against the appellants in their own case by the decision of the Tribunal. As such after rejecting the request for adjournment, we take up the matter and proceed to hear Id.SDR, Shri V.K. Chaturvedi.

2. The issue involved in present case is as regards the correct classification of electrical switches and other items, which the appellants are claiming as motor vehicle parts and accessories falling under heading 8708. On the other hand, the Revenue has classified the same under Chapter 8536.90 and 8512.00. We find that the said dispute was settled by the Tribunal in the appellants' own case as reported in 1997 (96) ELT 79 (Tribunal) holding the goods to be properly classified under Chapter 85 and not under Chapter 87. To the same effect is another

decision of the Tribunal in the appellants' own case as reported in 1997 (93) ELT 622 holding the goods to be classifiable under Chapter 85. As such, we hold that the appellants do not have a prima-facie in their favour on this count.

3. The appellants have also taken a ground before the Commissioner that the show-cause notices issued on 13.3.97 and 25.4.97 could not have confirmed by the original adjudicating authority inasmuch as the demand can be raised only from the date of issuance of the show-cause notice.

The said plea of the appellants has not been considered favourable by the Commissioner (Appeals) on the ground that the appellants contention is not sustainable in the light of Section 110 of the Finance Act, 200 (enactment on 12.5.2000) providing that the demand of differential duty can be raised even after the approval of classification list for the past period. We do not find any infirmity in the above view of the Commissioner of Central Excise (Appeals), which is backed by the provisions of Finance Act. Inasmuch as we do not find any prima-facie case in their favour, on account of issue having already been settled against them of their own case,, we direct the appellants to deposit the entire amount of duty within a period of eight weeks. Matter to come up for ascertaining compliance of 10th September, 2001. Subject to ascertainment of compliance, the appeal itself would be taken up for hearing on the said date.

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