Commissioner of Central Excise, Vs. thermon Heat Tracers Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-03-2001

Appellant : Commissioner of Central Excise,

Respondent : thermon Heat Tracers Ltd.

Judgement :

1. The question for consideration in these two appeals against the common order of the Commissioner (Appeals) is the classification of heat tracing cables, used as part of heat tracing systems in various industries. It is stated that the system is used in maintaining fluid substances at a temperature required to prevent their freezing or solidification. In the order impugned in this appeal, the Commissioner has confirmed the classification of the goods under heading 85.43 of the Tariff. The department in its appeal contends that the product is classifiable under heading 85.44. The manufacturer claims classification under heading 85.14. Heading 85.14 includes insulated wire, cable and other electric conductors. This is what the department claims the goods are. Heading 85.14 includes di-electric heat equipment, which is what their manufacturer claimed the goods to be.

Heading 84.43 is for electric machinery and apparatus for individual functions not specified or included elsewhere in chapter 85.

2. The Commissioner (Appeals) had before him for consideration the certificate dated 30.5.1994 issued by Prof. S.M. Saraph of the Maharashtra Institute of Technology, Pune, which concluded that the goods were not di-electric heating equipment, and the certificate issued by the Head of the Electronics &

Telecommunication Department, Government College of Engineering, Pune, which stated that the goods were di-electric heating equipment. The counsel for the appellant now relies upon a certificate of Mr. J. Achari, Scientist of Flame & Explosion Laboratory, Central Mining Research Institute, Dhanbad. This seems to suggest that the goods work on the di-electric principle. We are however unable to accept that the Central Mining Research Institute has any special authority or expertise in regard to electric equipment.

It is contended that the use of these cables in mines requires clearance from the department of the Explosion Laboratory. That however does not confer any special authority on the Central Mining Research Institute with regard to the properties of functioning of this equipment, other than its suitability for use in mines.

3. The counsel for the appellant further relies upon an order passed by the Commissioner (Appeals) in the appeal (number of which is unknown) filed by Raychem RPG Ltd. In this order the Commissioner has considered the classification of di-electric heating equipment imported by Raychem RPG Ltd. and has concluded that it is rightly classifiable under heading 8514.90 as claimed by the appellant. In this order, the Commissioner has relied upon a report of the Chemical Examiner of the Customs department that supports classification under this heading. If the goods under consideration by the Commissioner (Appeals) and those under consideration by us are identical, this decision would have determined the classification. We therefore accept the prayer for remanding the matter to the adjudicating authority for redetermining the classification of the goods, taking into account the order of the Commissioner (Appeals) and the opinion of the Chemical Examiner which he has considered. It is stated before us that the tariff headings for this product in the Customs & Excise Tariff are identical.

4. The appeal is allowed and the impugned order set aside. The matter is remanded to the Assistant Commissioner for determining the classification bearing in mind our observations, and after considering material that the manufacturer, and the department, may produce in support of their respective claims, in accordance with law.