Neel Controls Vs. Commissioner of Customs and C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-04-2002

Reported in : (2003)(151)ELT429Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Neel Controls

Respondent : Commissioner of Customs and C. Ex.

Judgement :

1. The question for consideration in this appeal is the classification of goods manufactured by the appellant described as servo controlled voltage stabilizer. The assessee had claimed classification of these goods and spare parts therefor under Heading 90.32 of the tariff.

Notice issued to it proposed their classification under Heading 85.04 The Assistant Commissioner concluded that the stabilizer functioned "by way of stepping down or setting up input voltage as per the requirement, to maintain fairly constant output voltage." He concluded that the product is essentially a transformer and correctly classifiable under Heading 85.04, as for its parts. On appeal from this order, the Commissioner (Appeals) concluded that this order was correct and confirmed it. Hence this appeal.

2. Heading 85.04 is for "electrical transformers, static converters (for example rectifiers) and inductors." Heading 90.32 reads "automatic regulating or controlling

instruments and apparatus." We have already indicated the reason that the Assistant Commissioner gave for classifying the goods under Heading 85.04 that the goods were essentially nothing more than electrical transformers. This reason has found favour with the Commissioner (Appeals), who also additionally concluded that Chapter 90 covers "Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus" apart from other goods that it mentions (such as clocks and watches) and that these goods under consideration do not come under any of this category. That is clearly a misconception. The Commissioner has gone by the heading of the chapter.

The law is clear, and emphasised in the general interpretative rule but that headings of chapters in sections are for ease of reference only and not for legal purposes. They cannot be referred to for classification.

3. Both these headings are verbatim reproduction of the relevant heading in the Harmonized System of Nomenclature. Therefore reference to the Explanatory Notes to determine the scope of these headings is justified. The notes to Heading 90.32 in the Harmonized System of Nomenclature Explanatory Notes specifically include in this heading automatic, regulators of electrical quantities. Notes at page 1661 of the second edition (1996 of these notes) are of significance.

4. If, the goods satisfy the requirement, it appeals that they would be classifiable under this heading. To determine whether this was the case, we had asked the representative of the appellant to produce evidence in the form of technical literature. He is absent and the appellant is unrepresented. On the last occasion representative of the appellant had produced affidavit affirmed by M.M. Vijath Kumar, an employee of the appellant. In this affidavit, he says a distinction is made between electrical transformers and the servo controlled voltage stabilizer. We are however reluctant to rely on this affidavit for the reason that it is affirmed by an appellant's employee interested in this appeal. It is appropriate that the classification be decided after consulting independent experts. The affidavit and the explanatory notes that we have referred to however do make out a prima facie case for classification of the goods under heading claimed by the appellant.

5. We, therefore, allow this appeal and set aside the impugned order.

The matter is now remanded to the Assistant Commissioner. He shall determine afresh the classification of these goods after considering the evidence that the representative of the appellant may produce before him, within two months from the receipt of this order. We make it clear that either side is at liberty to produce evidence with regard to classification of the goods and also make it clear that the Assistant Commissioner shall not feel bound by the prima facie observation we have made with regard to classification of the goods under consideration.

6. The departmental representative cites a decision of the Tribunal in PMP Auto Industries Ltd. v. CCE - 1999 (109) E.L.T. 520. This however is not of assistance to the issue because it was concerned with classification of voltage regulators intensity between Headings 85.11 and 85.36.