Commissioner of Central Excise, Vs. Ics Systems Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-03-2002

Reported in : (2002)(81)ECC595

Judge : K Usha, N T C.N.B.

Appellant : Commissioner of Central Excise,

Respondent : ics Systems Pvt. Ltd.

Judgement :

1. Both these appeals are directed against a common order i.e.

Order-in-Appeal No. 484-CE DLH 2001, dated 4-5-2001 of the Commissioner of Central Excise (Appeals), New Delhi. Accordingly, they were taken up for hearing together and are disposed of under this order.

2. The material facts of the case are that ICS Systems Pvt. Limited have been manufacturing Split Flat display boards. They had not taken Central Excise registration and were not paying any central excise duty on the display boards manufactured and cleared by them. This came to notice when the Central Excise Officers visited their premises on 8-1-98. Shortly thereafter on 28-1-98, Central Excise registration under Chapter Heading No. 8431 was granted to them by the jurisdictional central excise authorities. Subsequently, show cause notice dated 17-7-98 was issued to the appellant proposing central excise duty on the display boards cleared by them prior to the issue of registration at the rate applicable to

goods classifiable under Chapter Heading 9405.90. The notice also proposed imposition of penalty, recovery of interest etc. In adjudication, the Dy. Commissioner, Central Excise confirmed the actions proposed in the notice. When the matter was taken up in appeal by ICS Systems Pvt. Ltd. before the Commissioner (Appeals), the impugned order upheld the classification of the goods under Heading 9405.90. However, relief was granted in regard to interest. It was also held that amount of duty should be computed by treating the price realization on the goods cleared so far as cum duty amount. It was also held that provisions of Section 11AC (penalty) and Section 11AB (interest) would not apply to period prior to 28-9-96 inasmuch as those provisions came into force from that date. The Commissioner also reduced the penalty imposable to the amount of duty demand to be quantified by jurisdictional Dy. Commissioner.

3. The appeal of the assessee challenges the classification order in the impugned order and submits that the goods should be classified under Heading 8531 and the demand be worked out at the duty rate applicable to Heading 8531. The appeal also prays for calculation of the duty amount, treating the sales realization as cum duty. It is further prayed that penalty may be set aside.

4. The appeal of the Revenue challenges the direction to treat the sales realization as cum duty amount and the finding of the Commissioner that provisions of Section 11AC and 11AB could not be applicable prior to the date of their coming into force.

5. We take the assessee's appeal first for consideration. The main issue raised in this appeal is the correct classification of the display boards in question. The rival entries in the central excise schedule put forth by the assessee and Revenue are Heading 8531 (assessee) and 9405.90. (department).

These headings are extracted below to facilitate the examination of the dispute.

6. The finding in the impugned order relating to classification as contained in para five of the impugned order is as under :- "5.1 have gone through the records of the case very carefully.

Regarding the appellants' plea that the goods manufactured by them are correctly classified under Chapter sub-heading 85.30 or Chapter Heading 8531, I observe that the subject goods are not covered by Chapter subheading 85.30 as the same are neither signalling or safety or traffic control equipment. Under HSN, Chapter sub-heading 8531.20 specifically covers indicator panels incorporating liquid crystal devices (LCD) or light emitting diodes (LED). The goods manufactured by the appellants are neither of the two. As the Central Excise Tariff is patterned on the HSN, split flap type display boards manufactured by them would not be classifiable under Chapter Heading 8531. Accordingly, I hold that these goods have been correctly classified under Chapter subheading 9405.90 by the adjudicating authority".

7. The appellants have explained that the display boards in question are installed at Airports, Railway station etc. to provide information with regard to departure/arrival of flights, trains etc. The display boards put out such information for the information of the general public. The display board receives the commands for displaying the correct information from a computer which gathers the information and transmits it to the boards for display. The appellants have submitted that the Split Flat display board is correctly classifiable under Heading 8531 as electric sound or visual signalling apparatus inasmuch as the display board signals to the onlooker the arrival, departure etc. of aeroplanes, trains etc. They have submitted that the "Illuminated signs, illuminated name plates and the like" mentioned in Heading 9405 is not the appropriate heading for the goods in question.

8. The appellants have relied on the following extracts from the HSN note to Heading 8531 in support of their submission that the appropriate classification is under Heading 8531 "With the exception of signalling apparatus used on cycles or motor vehicles (Heading 85.12) and that for traffic control on roads, railways, etc. (Heading 85.30), this Heading covers all electrical apparatus used for signalling purposes, whether using sound for the transmission of the signal (bells, buzzers, hooters, etc.) or using visual indication (lamps, flaps, illuminated numbers, etc.), and whether operated by hand (e.g., door bells) or automatically (e.g.

burglar alarms). Static signs, even if lit electrically (e.g. lamps, lanterns, illuminated panels, etc.) are not regarded as signalling apparatus. They are therefore not covered by this heading but are classified in their own appropriate headings (Headings 83.10, 94.05 etc.)." (emphasis added) (D) Indicator panels and the like. These are used (e.g. in offices, hotels and factories) for calling personnel, indicating where a certain person or service is required, indicating whether a room is free or not. They include : (6) Station indicating panels for showing the times and platforms of trains." 9. They have also drawn our attention to the following HSN note relating to illuminated signs, illuminated name plates : The group covers advertising lamps, signs, illuminated name-plates (including road signs) and like articles such as advertising plates and address plates, of any material, provided that they have a permanently fixed light source." 10. The contention of the appellant based on the above notes is that while Heading 9405 covers only sign plates and the like showing static information, the goods covered under 8531 relates to indicator or signalling devices. The note to 8531 makes this position clear when it states that "Static signs, even if lit electrically ...... are not regarded as signalling apparatus".

They are, therefore, not covered by this heading but are classified in their own appropriate Headings 83.10, 9405 etc". It is the appellant's contention that HSN note specifically states that Heading 8531 includes inter alia "indicator panels and the like". The note has clarified that these panels are used for indicating where a certain person or service is required, indicating whether a room is free or not. This includes "station indicating panels for showing the times and platforms of trains". During the hearing of the case, learned Counsel for the appellant submitted that the indicator panel covered under 8531 dealt with dynamic, and changing information and data while illuminated signs, illuminated name plates etc. dealt with static information. The appellants have therefore, submitted that the original registration granted by the jurisdictional central excise authorities to the appellant under Heading 8531 was the correct classification and not 9405.90 approved in the impugned order.

11. During the hearing of the case learned Counsel for the appellant assessee stressed that even the Commissioner (Appeals) appears to have accepted that the

goods in question are covered under Heading 8531 but ruled against that classification only on the ground that the goods did not satisfy the description contained under 8531.20 inasmuch as the indicator panels did not incorporate liquid crystal devices (LCD) or light emitting diodes (LED). The learned Counsel submitted that the exclusion of the appellant's product from Heading 8531.20 did not mean that the goods remained excluded from Heading 8531 altogether. It only meant that the goods would be classified under 8531.80 as "other apparatus" The learned Counsel, therefore, submitted that Split Flap display boards should be correctly classified under Heading 8531.80 and not under 9405.90 as held in the impugned order.

12. As against the above submissions on behalf of the appellant, learned DR has pointed out that since the goods were not of signalling kind and did not have LCD or LED incorporated in them, the Commissioner was correct in holding that the goods in question cannot be classified under Heading 8531. He also submitted that basically these display boards only showed the position of trains and planes and therefore they can only be treated as sign boards meriting classification under Heading 9405.

13. Upon a perusal of the records of the case and upon consideration of the submissions made by both sides we are inclined to accept the appellant's contention that the goods are correctly classifiable under Heading 8531. This is clear from the HSN note to Heading 8531. The note specifically states that the heading includes indicator panel. Station indicating panels showing the times and platforms of trains have been specifically mentioned amongst the items included under indicator panels and the like. The note specifically excludes static signs and states that they are covered under 9405 etc. The devices in dispute indicate changing information. They are thus not static signs and they display dynamic information. These Split Flap panel boards indicate the information about the arrival and departure of trains and planes.

Therefore, it appears to be clear that the goods in question are visual signalling apparatus, and specifically, indicator panels, covered under Heading 8531. Certain of such indicator panels incorporating LCD or LED are covered under 8531.20.

The rest, being indicator panels all the same would fall under Heading 8531.80. That is the scheme of Heading 8531. Exclusion of non LCD or LED indicator panels from the scope of tariff item 8531 as has been done in the impugned order is to narrow the scope of Heading 8531 to merely the types of indicator panels covered under sub-heading 8531.20. This is an unwarranted axing of the scope of Heading 8531 and to render the entry 8531.80 relating to "other apparatus" nugatory. Such a narrowing of the scope of Heading 8531 goes against the entry itself and the HSN notes already mentioned.

14. In view of the discussions above, we hold that the correct classification of Split Flap display board in question is under Heading 8531.80. Their classification under 9405 ordered in the impugned order is set aside. It is accordingly ordered that differential duty payable by the assessee shall be worked out at the rate applicable to goods classifiable under 8531.80 and we direct that the appellant shall make payment of the duty so worked out for the period covered by the impugned order. The appellant's prayer regarding method of computation of value remains accepted by the Commissioner (Appeals). And the Commissioner was right in ordering that the price realized should be treated as cum duty. We find that that order was in conformity with this Tribunal's order in the case of TVS Srichakra Ltd. and Ors. [1999 (108) E.L.T. 361 (T)]. Therefore, no modification is called for in the impugned order on this score. We find no reason to interfere with the impugned order in respect of penalty also, inasmuch as this was a case involving proviso to Section 11A of the Central Excise Act in regard to recovery of duty non-levied and the proceedings had invoked Rule 173Q of the Central Excise Rules for imposing penalty in addition to Section 11AC of the Central Excise Act.

15. As already stated, Revenue's appeal is with regard to the finding in the order on the method of computation of assessable value and on the question of applicability of Sections 11AC and 11AB of the Central Excise Act. These objections have only to be stated to show that they have no merit. On the question of computation of assessable value, the impugned order followed the decision of this Tribunal in TVS Srichakra Ltd. and Ors.. That order now remains confirmed by the Apex Court vide order dated Feb. 26th 2002 in Civil Appeal Nos. 5862-5863 of 99 [2002 (142) E.L.T. A279 (S.C.)].

Similarly, it is elementary that statutory provisions take effect prospectively only, unless otherwise stated in the statute itself. The Commissioner was therefore right in holding that provisions of Sections 11AC and 11AB had no effect prior to the day they came into force.

Revenue's contention to the contrary cannot be accepted.

16. In view of what has been stated above, the appeal of the as- sessee is allowed as indicated above on the question of classification. The appeal of the Revenue has no merit and is rejected. The appeals are disposed of accordingly.