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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-14-2002

Reported in : (2002)(143)ELT192TriDel

Judge : S Kang, a T V.K.

Appellant : Rsf Technology Corpn.

Respondent : Commissioner of Customs, Mumbai

Judgement :

1. The issue involved in this Appeal filed by M/s. RSF Technology Corporation is whether Passive Infrared Intrusion Alarm System - 891213, imported by them is classifiable under subheading 8531.10 as alarm system or under sub-heading 8531.90 of the First Schedule to the Customs Tariff Act, as parts of Alarm System as claimed by the Appellants.

2. Shri S.P. Sharma, learned Advocate submitted that the Appellants before coming to India, had placed an order from Canada with M/s. AEI Advance Technology Industry, Hong Kong for supply of various component parts of the Burglar Alarm system which are freely importable under OGL; that the Appellants were also informed by the Indian High Commission in Canada and the Licensing Authority in Delhi that parts of the Burglar Alarm system are importable under OGL and no import licence is required for the same; that accordingly, they imported the consignment of the component parts of Burglar Alarm, system in August, 1998; that they had imported blankey for spare purpose; MC - 01 Magnetic Contact, and

Passive Infra Red Intrusion Alarm system and Passive Infra Red Intrusion Mini Detector; that the Additional Commissioner under Adjudication Order-dated 27-11-98 con- fiscated the passive infrared alarm system with option to redeem the same on payment of fine of Rs. 2,50,000/- and penalty of Rs. 25,000/- on the ground that the goods are having essential character of Burglar Alarm system and would merit classification under sub-heading 8531.10 in terms of Rule 2(a) of Interpretative Rules for which a specific import licence is required; that the other goods were held to be freely importable by the Additional Commissioner; that on Appeal, Commissioner (Appeals) also rejected Appeal filed by them holding that the impugned goods at the time of importation had essential characteristics of complete burglar alarm system. Learned Advocate further submitted that complete burglar alarm system consists of 14 parts, the description of its components are given in the letter dated 28-11-98 of the foreign supplier; that furthermore, a circuit diagram of the complete burglar alarm system would prove beyond doubt that many components and parts as described in the foreign supplier letters are required for making a burglar alarm system complete in all respects; that even the adjudicating authority had himself observed in the Adjudication Order that he did not dispute the importer's and supplier's contention that certain other parts/components were required to make it work as complete burglar alarm system; that this itself goes to prove that what they have imported was not complete burglar alarm system. He also mentioned that at the time of import, they had submitted a fax message dated 9-9-98 from the supplier wherein it was clearly stated that the consignment was of parts of complete burglar alarm system.

3. Learned Advocate relied upon the decision of the Tribunal in the case of Auto Alarm Industries v. Collector of Customs, Bombay -1994 (73) E.L.T. 204 wherein it was held that the component parts of automatic fire detector system is not complete instrument; that the Tribunal has held therein that "when the literature produced in relation to the specific unit meant to show that they are no more than the sensor, the reasoning adopted by the learned Adjudicating Authority cannot be endorsed to hold that the units are complete instruments." The learned Advocate contended that four parts imported by them of PIR infrared alarm system was nothing but parts and accessories of burglar alarm system. Reliance has also been placed on the decision in the case of Larsen and Toubro Ltd. v. CCE,

Bombay -1996 (88) E.L.T. 176, wherein it was held that exemption to parts used in the manufacture of electrical goods under Notification No. 233/83-Cus. is not deniable merely because such parts may be finished products or complete articles by themselves since the finished products can also be used as parts in manufacturing other products.

4. Countering the arguments Shri Ashok Kumar, learned Departmental Representative, submitted that the Appellants have themselves agreed that what was imported by them was burglar alarm system. The learned Departmental Representative drew our attention to the Adjudication Order wherein it is mentioned that Shri R.K. Arora, Manager of the Appellants, appeared for personal hearing, agreed with the stand of the Department, and requested for leniency, as it was their first import.

The learned Departmental Representative also mentioned that the impugned goods consists of Motion Detector, Magnetic Switch, piezo siren and power adaptor and when all of these are assembled, they get essential character of Burglar Alarm system and applying Rule 2A of Interpretative Rules, these have to be assessed as Burglar Alarm system classifiable under sub-heading 8535.10. Finally, he submitted that the letter dated 28-12-98 of the supplier was given by them after more than four months of the import and moreover the letter itself mentioned that this model consists of four basic parts; that in Bill of Entry also description of goods was given as Alarm and accessories and not as components of alarm system. He also relied upon the decision in the case of Universal Commercial Corporation v. Collector of Customs, Delhi -1994 (69) E.L.T. 150 (T) wherein condensing units were held to be incomplete Air-conditioning machines falling under sub-heading 8415.10 and the Tribunal observed that both from the point of view of common parlance, they may be incomplete Air-conditioning and other parts are also required to make it as a functional air conditioner but for the purpose of assessment, the goods satisfied the description as given in Customs Tariff as they have the essential character of Air-conditioning machines. Learned Departmental Representative also mentioned that the Appeal filed against this decision has been dismissed as reported in 1994 (70) E.L.T. A100.

5. We have considered the submissions of both the sides. Invoice dated July 3, 1998 of the foreign supplier M/s. AEI Advance Electronic Industry Ltd., Hong Kong clearly described the impugned goods as PIR - 8912 B Passive Infrared Intrusion Alarm System. In the invoice, where the Appellants had only imported certain components, the same were described as per their description such as magnetic contact or mini detector. In respect of the impugned goods only, the description was given as Alarm system which goes to show the foreign supplier considered them as Alarm system only. Even in their letter dated 28-12-98, the Supplier has mentioned that "the set 8912 B consists of four basic parts" 1 basic master unit, PIR 8912, MC-01 (Three PCs), PS 101,12 VDC" It has not been disputed that these four basic parts namely motion detector, magnetic switch (MC-01) the Piezo siren (PS 101) and Power Adaptor (12 VDC) have been imported by the Appellants. Once the foreign supplier himself treats the goods supplied by him as Alarm system, the Appellants cannot claim them to be only components/parts of the alarm system. Further, Rule 2(a) of the Interpretative Rules clearly provides that any reference in a Heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. Rule 2(a) of the Interpretative Rules has rightly been invoked in the present matter as the goods in question have the essential character of complete alarm system. The ratio of the decision in the case of Auto Alarm Industries, supra, is not applicable since in that matter, it was apparent from the literature produced that the impugned goods acted merely as smoke detector and there was no indication available from the entire investigation as to the Model of the unit imported and in absence of which the submissions made by the Revenue could not be considered in detail. Accordingly, we agree with the classification of the impugned goods under subheading 8531.10 of the Customs Tariff. In absence of the specific import licence, the goods are liable for confiscation and the redemption fine and penalty imposed are not in the higher side. We, therefore, find no reason to interfere with the impugned order and reject the Appeal.