Commissioner of C. Ex. Vs. Scientific Mes Technik Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-17-2002

Reported in : (2002)(82)ECC571

Judge : S Kang, a T V.K.

Appellant : Commissioner of C. Ex.

Respondent : Scientific Mes Technik Ltd.

Judgement :

1. In these three appeals, preferred by Revenue, the issue involved is whether the impugned electronic instruments manufactured by M/s.

Scientific MES Technik Ltd., are classifiable under Heading 90.30 of the Schedule to the Central Excise Tariff Act as confirmed by the Commissioner (Appeals) under the impugned Order or are classifiable under Heading No. 85.43 as claimed by the Revenue. The appeals also involve the issue of classification of 'oscilloscope trolly' whether under Heading 94.03 or 90.33 of the Tariff.

2. At the outset the learned Advocate, Shri L.P. Asthana, mentioned that the Respondents are not disputing the classification of the "trolly" under Heading No. 94.03 of the Tariff and as such Revenue's appeal is allowed as far as classification of Trolly is concerned.

3. Shri Ashok Kumar, learned D.R., submitted that the Respondents have classified impugned electronic instruments, namely, Pulse Generator, Function

Generator, Sine Wave Generator and Low Distortion Generator under Heading 90.30 which have been confirmed by both adjudicating authority and Commissioner (Appeals), under the impugned Order; that Heading 90.30 applies to Oscilloscope, spectrum analysers and other instruments and apparatus for measuring or checking electrical quantities; that the technical literature of the Respondents, while describing the impugned products, no where mentions that these instruments measure or checks electrical quantities; that all the impugned goods are apparatus for the production of electrical signals and have individual functions and as such are specifically classifiable under Heading 85.43 of the Tariff; that as per Explanatory Notes of H.S.N. below Heading 85.43, "the electrical appliances and apparatus of this Heading must have individual functions"; that all the impugned goods have their individual functions; that Heading 85.43 as an example has mentioned 'Signal Generators' which are apparatus for the production of electrical signals of known wave-form and magnitude, at an assignable frequency; that further as per Explanatory Notes "These include, inter alia, impulse generators, pattern generators, wobbulators (sweep generators)." He, further, submitted that 'as per McGraw-Hill Encyclopaedia of Science & Technology, Pulse generator is "an electronic circuit capable of producing a wave form that rises abruptly, maintains a relatively flat top for an extremely short interval and then rapidly falls to zero. A relaxation oscillator, such as multivibrator, may be adjusted to generate a rectangular wave form having an extremely short duration, and as such it is referred to as a pulse generator." According to said Encyclopaedia Signal Generator is "A piece of electronic test equipment that delivers a sinusoidal output of accurately caliberated frequency. The frequency may be anywhere from audio to micro wave, depending upon the intended use of the instrument.

The frequency and the amplitude are adjustable over wide range. The oscillator must have excellent frequency stability, and its amplitude must remain constant over the tuning range......... Many signal generators contain circuitry that allows the output to be either amplitude or frequency modulated. The most common form of amplitude, modulation are sinusoidal, square wave or pulse." 4.1 He also mentioned that according to McGraw-Hill Encyclopaedia of Science & Technology. Oscilloscope is described as under : "An electronic instrument which produces a

luminous plot on a fluorescent screen showing the relationship of two or more variables. In most cases it is an orthogonal (x,y) plot with the horizontal axis being a linear function of time. The vertical axis is normally a linear function of voltage at the signal input terminal of the instrument. Because transducers of many types are available to convert almost any physical phenomenon into a corresponding electric voltage, the oscilloscope is a versatile tool in all forms of physical investigation."
4.2 The learned D.R., therefore, contended that the impugned generators are different kind of signal generators which, according to H.S.N., are classifiable under Heading 85.43 of the Tariff; that the impugned goods cannot be termed as parts and accessories of Oscilloscope as they have their individual functions of generating signals where as oscilloscope is a device for measuring/analyzing signals.

5. On the other hand, Shri L.P. Asthana, learned Advocate, submitted that the Respondents are manufacturing Oscilloscopes, and Modular measuring instruments including electronic instruments such as Pulse generators, function generators, sine wave generators and low distortion generators; that Oscilloscope is an instrument for representing the oscillations of a varying voltage or current on a fluorescent screen of cathode ray tube and the impugned goods are auxiliary machines to or accessory of Oscilloscopes; that these instruments in question are distinct from 'signal generator' which has been placed under Heading 85.43 in H.S.N. Explanatory Notes. The learned Advocate also mentioned that as per Note 1(1) to Section XVI of the Tariff, Section XVI does not cover "Articles of Chapter 90"; and contended that no such corresponding exclusion clause finds place in Section XVIII or in Chapter 90 of the Tariff. He, further, mentioned that the Department of Electronics (Government of India) has also treated the Pulse Generator and Function Generator as Test Instrument which is apparent from the International Competitive Bidding, Volume II (Package No. 3) Conditions of Contract for Procurement of Test Instruments. For Electronics Industry Development Project. He contended that all the instruments are used in conjuction with Oscilloscope and as per Note 2 to Chapter 90 parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, are to be classified with the machines, instruments or apparatus of that kind and accordingly the impugned instruments being accessories of

Oscilloscopes, are appropriately classifiable under Heading 90.30 of CETA. In reply, the learned D.R. mentioned that 'working in conjunction with' is not a criterion for determining the classification; that if this argument is accepted stabilizer which works in conjunction with air-conditioners are to be classified along with air-conditioners. The learned Advocate finally mentioned that part of the demand is time-barred, being beyond the normal period of limitation of 6 months as they were filing classification lists/declarations and RT-12 Returns regularly.

6. We have considered the submissions of both the sides. The rival Tariff Headings read as under :- "90.30 Oscilloscopes, spectrum analysers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of Heading No. 90.28; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations.

85.43 Electrical machines and apparatus, having individual functions, Not specified or included elsewhere in this Chapter." 7. The main contention of the learned Advocate for the Respondents is that the instruments in question are accessories of oscilloscopes and are, therefore, classifiable under Heading 90.30. The Revenue, on the other hand, has emphasized that all the impugned instruments have their individual functions and are different kind of Signal Generators which have been classified under Heading 85.43 in the Explanatory Notes of H.S.N. It has not been disputed by the learned Advocate that the impugned instruments have their individual functions. He has mainly contended that these instruments work in conjunction with Oscilloscopes and as per Note 2 to Chapter 90 are to be classified along with Oscilloscopes that is Heading 90.30. Heading 85.43, as per Explanatory Notes of H.S.N., covers all electrical appliances and apparatus, not falling in any other heading of this Chapter, nor covered more specifically by a heading of any other Chapter nor excluded by the operation of a Legal Note to Section XVI or to Chapter 85. Explanatory Note further mentions that Explanatory Note to Heading 84.79 apply mutatis mutandis to the appliances and apparatus of Heading 85.43. The Explanatory Notes under Heading 84.79 mention that following machines are to be regarded as having "individual functions".

A. Mechanical devices, with or without motors or other driving force, whose functions can be performed distinctly from and independently of any other machine or appliance.

B. Mechanical devices which cannot perform their function unless they are mounted on another machine or appliance, or are incorporated in a more complex entity, provided that this function: (i) is distinct from that which is performed by the machine whereon they are to be mounted, or by the entity wherein they are to be incorporated, and (ii) does not play an integral and inseparable part in the operation of such machine, appliance or entity.

The instruments in question are admittedly mounted on Oscilloscope (no rebuttal by the Revenue). However, there is no material brought on record that their functions are not distinct from Oscilloscopes and do play an integral and inseparable part of Oscilloscopes. We also observe that Note 2 to Chapter 90 provides for the classification of parts and accessories as under : "2. Subject to Note 1 above, parts and accessories for machines, apparatus, instruments or articles of this Chapter are to be classified according to the following rules :- (a) Parts and accessories which are goods included in any of the headings of this Chapter or of Chapter 84, 85 or 91 (other than heading No. 84.85, 85.48 or 90.33) are in all cases to be classified in their respective headings; (b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of Heading No. 90.10, 90.13 or 90.31) are to be classified with the machines, instruments or apparatus of that kind; (c) All other parts and accessories are to be classified in heading No. 90.33;" 8. Note 2(a) to Chapter 90 clearly mentions that parts and accessories which are goods included in any of the Heading of Chapters 84, 85, 90 or 91 are in all cases to be classified in their respective Headings.

The Headings excluded from the purview of this clause are only 84.85,85.48 or 90.33. As the impugned instruments, being having individual functions are covered by Heading 85.43, by virtue of Note 2(a) to Chapter 90, these cannot be classified under Heading 90.30, being accessory of Oscilloscopes. Note 1(1) of Section XVI only excludes Articles of Chapter 90 that is articles which are specifically covered by Chapter Headings/Sub-headings and not to such goods which are not specifically mentioned in Chapter 90. We, therefore, classify the impugned instruments under Heading 85.43 of the Tariff. However, we agree with the learned Counsel for the Respondents that larger period of limitation for demanding duty is not invokable in the present matter as they admittedly had filed Classification Lists since 1988-89 classifying their impugned products under Heading 90.30 only which were approved by the Assistant Collector. Accordingly the demand of Central Excise duty for the month of January, 1992 is hit by time-limit as specified in Section 11A(1) of the Central Excise Act as the show cause notice was issued on 10-8-92, beyond the period of six months. The adjudicating authority will recompute the duty payable and intimate the same to the Respondents who are liable to pay the same.