Kinetic Engineering Ltd. Vs. Commissioner of Central Excise

Kinetic Engineering Ltd. Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/30421

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-27-2003

Reported in : (2003)(159)ELT559Tri(Mum.)bai

Judge : K Kumar, S T C.

Appellant : Kinetic Engineering Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. Shri A. Hidayatullah, learned Advocate for the appellants states as follows :- 1. The classification of the goods under Chapter sub-heading 8528.00 was not at all in dispute. The benefit of the Notification could not be denied once it was not in dispute that the goods fell under the above sub-heading and also met the description of T.V. receivers set out in Serial No. 18 of the Notification.

2. The basic function of the said goods remained that of a T. V. receiver and the other functions viz. of the audio amplifier and the so called computer were incidental to the main function.

3. As laid down by the Tribunal in a catena of consistent decisions the exemption (benefit) to a machine based on a specific use or function cannot be denied on the ground that the machine is capable of other use or function(s) :-Philips India Ltd. v. Collector -1996 (81) E.L.T. 375 [Appeal dismissed by Supreme Court 1998 (97) E.L.T. A134] (e) Sanghi Synthetics Pvt. Ltd v. Collector of Customs - 1996 (82)

E.L.T. 238 (f) Collector of Customs v. T.I. Diamond Chain Ltd. - 1997 (82) E.L.T. 804 (g) Badra Estate & Industries Ltd. v. Collector of Customs - 1997 (93) E.L.T. 46 (h) Escorts Tractors Ltd. v. Collector of Customs 1998 (98) E.L.T. 717 4. The rule of strict construction of an exemption Notification does not mean that full effect to an exemption Notification should not be given by a circuitous process of interpretation ;-Swadeshi Polytex v. Collector (b) Bombay Chemical v. Collector of Cen. Ex - 1995 (77) E.L.T. 3 (S.C.) 5. All the earlier Classification Lists in respect of the said goods were approved by the Department, granting the benefit of the Notification. There was no subsequent change in the facts or the process of manufacture nor was there any change in the law. It was not open to the Department to deny the benefit of the said Notification :- 2. Shri S.S. Bhagat, learned SDR appearing for the department adopts the arguments given in the impugned order passed by the Commissioner (Appeals). The relevant portion of the order of the Commissioner (Appeals) is extracted below :- "I have carefully considered the submissions made by the appellants.

The basic question to be decided is whether the TVs manufactured by the appellants are covered by Serial No. 18 of Notification 87/89.

Here I find that if Notification 87/89 is read in its entirety even it will make it clear that TV receivers having clock, radio receiver or sound recording or reproducing apparatus have been treated differently under S. No. 19 and 20 of the Notification as compared to S. No. 17 & 18. This, therefore, makes it abundantly clear that the concessional rate of duty prescribed in respect of Serial No. 17 & 18 of the Notification will be applicable to simple and plain TV receivers of the prescribed screen size, having remote control facility or without remote control facility and picture-in-picture type etc. If there were additional features like having a clock or radio or sound recording or reproducing apparatus, the Notification prescribes different set of duty in respect of TVs having these added features. Since the TVs manufactured by the appellants was having computer facility they cannot be said to be covered by Serial No. 18 of the Notification and since this type of feature has not been described in Notification 87/89 at all the concessional rate of duty prescribed under this Notification will not be applicable to them and the duty will have to be paid at the tariff rate. The appellants contention that their TV was not having a home computer is wrong as the TV have been provided with a handset which was having different keys for typing the material of the TV monitor and has an attached processing unit which has a limited memory and the data could be retrieved out of the stored memory. This processing unit was not required for the operation of the TV at all but was an additional gadget. The TVs can also be used for displaying the educational programmes recorded on EPROM cassettes, which is not the function of a normal TV. Various CEGAT decisions cited by the appellants are distinguished as in those cases the exemption Notification did not describe separately the fax machine or the radio or transistor set having different features and no separate rate of duty was prescribed for such machines or radio sets having added features. Therefore, once description under Notification and the description in the tariff heading was identical, the concessional rate prescribed under Notification could not have been denied. However, in the present case the tariff description under heading 8528 have been bifurcated in 10-12 sub-headings and different rates of duty has been described for TVs having added features like clock, sound radio broadcast receiver with or without clock, sound recording or reproducing apparatus with or without clock, sound recording and reproducing apparatus and radio broadcast receiver with or without clock. This clearly establishes that Serial No. 18 refers to only simple TV without any added feature and therefore, the concessional rate in these show cause notices has been rightly denied." 3. After hearing rival submissions and perusal of case records, we find that the impugned goods namely television with computer facility has been classified under Heading 8528.00 which reads as follows :- "Television receivers (including video monitors and video projectors), whether or not incorporating radio broadcast receivers or sound or video recording or reproducing apparatus." Having classified the impugned goods as television receivers, the A.C.has proceeded to deny the same the benefit of the exemption under Serial No. 18 to the Table Annexed to Notification No. 87/89. The impugned order-in-original passed by the Assistant Commissioner directs the appellants to pay the duty as per the Tariff rate without applying the aforesaid exemption notification. It is seen from the said Notification No. 87/89 that it has several entries relating to television receivers from Serial No. 15 to Serial No. 22, which are as follows :- Television receivers (monochrome) of screen size not exceeding 15 centimeters Television receivers (monochrome) of screen size exceeding 15 centimeters but not exceeding 36 centimeters Television-receivers (monochrome) of screen size not exceeding 36 centimeters Television receivers (other than monochrome) of screen size exceeding 15 centimeters but not exceeding 36 centimeters (a) without remote control facility (b) with remote control facility Television receivers (other than monochrome) of screen size exceeding 36 centimeters but not exceeding 55 centimeters (i) without remote control facility (other than picture-in-picture type) Television receiver (monochrome) of screen size not exceeding 36 centimeters combined in the same housing with- (iv) Sound recording or reproducing apparatus and radiobroadcast receiver with orwithout clock Television receiver (monochrome) of screen size exceeding 36 centimeters combined in the same housing with - (iv) Sound recording or reproducing apparatus and radio-broadcast receiver with or without clock Television receivers (other than monochrome) combined in the same housing, with radio broadcast receivers or sound recording or reproducing apparatus Television receivers combined in the same housing, with video recording or reproducing apparatus As has been noted by the Commissioner (Appeals), Serial No. 17 covers Black & White Televisions, Serial No. 18 covers Colour Televisions whereas Serial Nos. 19, 20, 21 and 22 have additional attachments such as clock, radio, sound and video recording and reproducing apparatus.

The duty rates are higher for these televisions sets with added features compared to televisions sets covered under Serial Nos. 17 and 18. However, it is a fact that the exemption notification does not have a separate entry for television sets having computer facility to cover the impugned goods. The notification does not also have a residual entry to cover television sets along with unspecified attachments. In the absence of such entries, it has to be seen whether the impugned goods can be covered under an existing entry. As there is no exclusion under Serial No. 18 to exclude television sets with additional attachments, the impugned goods which have been classified as television receivers cannot be denied coverage under Serial No. 18. It is clearly a drafting mistake not to exclude combination sets from the entry under Serial No. 18, Consequently, we have no option but to set aside the impugned orders passed by the lower authorities and allow the appellants exemption under Serial No. 18 of the Table annexed to

Notification No. 87/89.