Rajasthan Electronics and Vs. Commr. of C.Ex.

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SooperKanoon Citation : sooperkanoon.com/31752

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-29-2003

Reported in : (2003)LC339Tri(Delhi)

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

Appellant : Rajasthan Electronics and

Respondent : Commr. of C.Ex.

Judgement :

1. The issue raised in this appeal is the correct classification of, (1) Auto Zero Control Panel Assembly, (2) Photocell, and (3) Switch Units. Under the impugned order, the Commissioner has held that these items will not be classifiable as parts of electronic milk tester under Tariff Heading 90.27 of the Central Excise Tariff, Commissioner has instead held them to be classifiable under tariff Heading 85. This has been done by relying on Note 2 to Chapter 90.

2. We have perused the records and have heard both sides. The submission of the learned Counsel for the appellants is that the impugned order has not discussed the grounds for classifying the goods under Chapter 85. He also pointed out that tariff item 85.17 indicated in the order for switch units appears to be clearly erroneous. As against this, learned SDR has pointed out that the Commissioner's finding that Note 2 of Chapter 90 is attracted to the Classification of this items is required to be upheld. He also has pointed out that there could be no dispute about the classification of Photocell under Heading 85.41 as that heading

specifically mentions 'photo-voltic cells'. He has submitted that the classification of the other items may be remitted to the Original authority for fresh consideration after considering relevant materials.

3. Note 2 in Chapter 90 relates to classification of parts and accessories for machines covered by that Chapter. Electronic Milk Tester is an item falling under Heading 90.27. The issue raised is the classification of certain items used as parts/components of the Milk Tester. Therefore, the Commissioner was right in relying on this Note while considering the classification of the parts in question. Since photocells in question are specifically covered by the entry "photo-voltic cell" under Heading 85.41, that part of the classification order requires no fresh consideration. However, it is seen that the classification orders in respect of other items have been passed without considering relevant materials. In fact, since the original order was passed without considering Note 2 under Chapter 90 at all, the issue of classification of these items other than as parts of under Chapter 90 was not considered at all and relevant materials looked into by the Deputy Commissioner.

4. In the circumstances mentioned above, it is essential that the question of correct classification of Auto Zero Control Panel Assembly and Switch Units be reconsidered by the original authority after considering relevant materials on the subject. In order to facilitate this, the impugned order is set aside in as far as it relates to the classification of these 2 items and the issue remitted to the jurisdictional Deputy Commissioner for passing a fresh order. The classification of photocell under Heading 85.41 is confirmed.