Television and Components Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-04-2003

Reported in : (2003)(90)ECC13

Judge : S T S.S., K Kumar

Appellant : Television and Components

Respondent : Commissioner of C. Ex.

Judgement :

1. The appellants are manufacturers of Colour Television sets of various sizes and models. They claimed benefit of Notification No.67/89-C.E., dated 1-3-89 Sl. No. 18 thereof, which reads as under :- "18.

8528.00 Television receivers (other than mono- Rupees chrome) of screen size exceeding 36 2,250/- per centimeters - (i) without remote control set" on the classification list filed by them and discharged duty at the rates as prescribed by this exemption after the classification lists were approved by the proper officers.

2. A show cause notice dated 11-7-94 was issued pursuant to a visit by the Central Excise Officer (Preventive) to their factory and certain enquiries conducted by them. The show cause notice demanded duty of Rs. 65,15,362.50 in respect of 24,481 Television sets cleared by them during, the period 17-6-92 to 10-12-92. The demand was made by invoking to proviso to Section 11A(1) of Central Excise Act, 1944 read with Rule 9(2) of the Central Excise Rules and also proposed the

imposition of penalty under Rule 173Q. The notice was replied on behalf of the company and on behalf of Mr. J.S. Jhaveri, Managing Director of the appellants' company. After grant of a personal hearing the impugned order dated 31-10-97 was issued on 21-11-97 confirming the demand of duty, imposing a penalty of Rs. 20 lakhs under Rule 173Q on the appellant-company along with a penalty of Rs. 20 lakhs on Shri J.S.Jhaveri, Managing Director of the appellant-company under Rule 209A.Hence these appeals.

3. After hearing both sides and considering the material on record, it is found : (a) The Commissioner vide the impugned order while considering the plea, whether there was no misdeclaration in this case and on material to exist to invoke the larger period, as per the first proviso to Section 111(1) formulated to following 2 questions for determination :- "Whether the 4 models of T.V. set mentioned in the Show Cause Notice are to be treated as TV sets "with remote control facility" or "without remote control facility" and as such whether the demand of Rs. 65,15,362.50 is enforceable under the provision of Rule 9(2) of the Central Excise Rules, 1944 read with the Proviso to Section 11A of the Central Excise Act, 1944? Whether the Noticees are liable to a penalty under the provisions of Rules 173Q and 209A of the Central Excise Rules, 1944?" 4. Proceeding to determine the first issue as formulated by the adjudicator and determined, it is found :- (a) The adjudicator has held, that since the word 'facility' was not defined in the Notification, by giving the plain meaning from the 'Concise Oxford Dictionary' which gives the meaning of the word 'facility' to be 'equipment or resources for doing something,' it was to be held that, it was not necessary for the TV sets having a 'remote control facility' should invariably be supplied with a 'remote control and unit'. It was found as follows :- "..........A remote control hand unit is a separate apparatus by which the inbuilt receiver circuit can be operated and the functioning of remote control can be effective. It is also observed that the remote control hand unit is a separate apparatus by itself and it is separately classifiable under chapter Heading 85.29 as per the Trade Notice No. 107/87, dated 2-7-87 of Ahmedabad Central Excise Commissionerate. This means that a TV set "with remote control facility" can be sold along with remote control hand unit or without remote control hand unit, and in both situations it has to be treated as a TV set with "Remote Control Facility", as a TV set "with remote control facility" can be

operated with a "remote control hand unit" purchased separately." and therefore held that the noticee's contention of a TV set 'with remote control facility' to be considered, only when it is accompanied with the command unit, is found to be totally baseless.

He held that what is relevant for a TV set 'with remote control facility' is that it should have the necessary apparatus and mechanisms to receive the signals from the command unit, to make the systems function on remote control by the user/consumers. From the statements of dealers, as well as ultimate users, who had purchased the 4 models of TV sets in question, he found that the TV sets were operatable by a command unit, which was supplied to the customers by the dealers of the noticee and relying upon the statement of an Electrical Engineer of the manufacturers factory, that the aforesaid TV sets had inbuilt receiver circuits and that one command unit which could be used for one model could be used for another, provided the internal circuits of the two models matched and the fact that the admitted position emerging was that for operating TV model COSY-DDS with inbuilt receiver circuit, the remote control command unit of COSY-R could be used for operating the 8010 model.

Therefore it was established that by the manufacturer of the said models of TV inbuilt receiver circuit of the component/parts such as capacitors, resistors, ICs and infrared receivers were being used and the admitted position that cost of such sets was more than TV sets without such circuits it was held by the adjudicator that such inbuilt receiving system which is having a very negligible impact on the cost of colour TV set, to the extent of only Rs. 30/- - Rs. 40/- and that no businessman would incur any additional costs without attendant profits for incurring the same, hence, the claim of the manufacturer that the 4 models of the TV sets in this case were 'without remote control facility' was without any substance. There was misrepresentation in this case, inasmuch as the sets were declared to be without remote control facility and from the following findings, this assumption was established by the adjudicator from - "(i) Shri Jagdish bhai S. Jhaveri in his statement dated 4-6-94 has admitted that the remote control inbuilt receiver circuit facility was removed from 4 models in June '92, October '92 and January '93.

(ii) The fact that these TV models were having the remote control facility was brought to the notice of the Department by Shri Jhaveri only on 11-2-93 vide his letter No. Nil dated 11-2-93, i.e., after the detection of the modus operandi by the Department on 4-12-92.

(iii) The examination of diagrams and the inquiries conducted with the customers who purchased these TV sets through the no-ticees' dealers indicate that the TV sets did have remote control facility and the customers got the hand units from the noticees' dealers.

(iv) Even some of the bills, as per inquiry conducted with the customers, indicate that the TV sets were purchased along with hand sets from the dealers. The Panchnama drawn at M/s. Dholakiya Video and Hotel Ram Ville also showed that the TV sets were having remote control facility and in one case the customer did purchase the TV set with the hand unit." Since this would clearly establish that these TV sets were 'with the remote control facility' and the facts were concealed from the Department while submitting statutory documents such as classification lists, gate passes, etc. The fact that the noticee company and its Managing Director were selling these sets without remote control facility would not assist the appellants' conduct to evade the payment of differential duty of Rs. 250/- per TV set as per Notification No. 87/89, dated 1-3-89.

(b) The ld. JCDR while reiterating the above findings and taking us through the same, also relies upon page 232 of the 'World Book Encyclopaedia'. The relevant portion of which reads as follows :- "Remote Control is the control of a system from a distance. The system may range from a television set to a guided missile or satellite, and the distance may be a few feet or thousands of miles.

Remote control improves the ease and efficiency of operating various mechanisms. It also helps perform certain tasks that otherwise would be too difficult or dangerous.

Remote control requires a device called a command unit, by which the human operator sends signals that control the system. As the system performs, the operator checks it and may send additional signals to keep it working correctly. In simple remote control systems, the operator can check the performance of the system merely by observing it. Complex systems may include instruments that provide information on performance.

Kinds of remote control can be grouped according to the way the command unit sends signals to the system. Some command units send signals by radio waves. Others use infra-red light beams, ultrasonic waves, a device called a laser, electric wires, the human voice, or even mechanical hands.

Infra-red remote control is used to operate such devices as TV sets and video cassette recorders (VCRs). A device called a Photodetector receives the beam of infra-red rays from the command unit. The photodetector converts the rays into electronic signals, which control the on-off switch, channel selector, and volume.

A remote control television set has a device that sends a beam of infra-red rays to the set, above left. A photodetector converts the rays to an electronic signal and sends it to a remote control unit, above right. This unit controls the on-off switch, volume, and channel selector.

History. The first machines operated by remote control were radio-controlled motorboats. They were developed by the German Navy to ram enemy ships during World War I (1914-1918). Radio-controlled bombs and other remote control weapons were developed during World War II (1939-1945). After the war, United States scientists began to experiment with non-military uses of rage door openers in the late 1940's, and remote control TV became available in the mid-1950's.

Today, robots operated by remote control are used to perform tasks in dangerous areas. For example, such robots performed much of the cleanup of the Three Mile Island nuclear power plant near Harrisburg, Pa., after an accident in 1979 released radioactive materials." to submit that the TVs in question, without 'hand operated command device' but with infra-red ray window with inbuilt circuit should be considered as TVs with remote control facility.

(i) Frequency matched handsets were not supplied along with the TV sets, therefore, having infra-red ray window on the sets would not amount to the set being 'with remote control facility'. In view of the 'World Book Encyclopaedia' as relied upon by the Department indicates that 'remote control requires a device called a command unit, by which the human operator can avail the facility of the system. Without such a device, the beam of infra-red rays to the window, where they are converted to an electric signal. Without a command control device, a system would be incomplete system and not a facility. Since without frequency matched handsets, the TVs would not have facility of remote control as per technical terms, trade parlance or commercial understanding. They have cleared other TVs with handsets wherein, they have not claimed the benefit of such an exemption.

(ii) The reliance of the adjudicator on dictionary meaning should not be given undue weightage in view of the decisions in the case of Good Year India [1997 (92) E.L.T. 14], Indian Cable Co. Ltd. [1994 (74) E.L.T. 22]. The notification has to be interpreted in the manner in which it would be understood in Technical terms of the remote control facility being available or not available.

(iii) The dealers/consumers, were concerned with handsets supplied TVs to be the TVs with such a facility. Not the TVs supplied without handset. What the dealers did further or other buyers did should not effect the classification which should be of the goods as they were at the time of clearance.

(iv) The Department of Electronics, Government of India vide their letter No. 22(1)/93/Exp, dated 10-8-93 have clarified what a C-TV (Colour TV) set with remote control facility, should mean and this clarification, is that TV with remote control facility' would mean with a hand held remote control unit. They have further clarified 'the built in remote control signal receiving circuit does not imply the set to be with remote control facility, if it is not supplied with a hand held remote control unit.' This clarification of the Department of Electronics, Government of India. They relied on the following decisions in this respect :- And submit that Department was bound to prove their case by producing valid material. They have not produced any rebuttal evidence to challenge this Experts Opinion. They drew attention to the following finding as regards the letter from the Department of Electronics, Government of India ;- "The photocopy of the letter dated 10-8-94 from one Shri

Sachdev from the Department of Electronics, Government of India, is of no help to the Noticees because such letter is not authenticated by any Departmental/Gazetted Officer, So, its veracity is questionable." which was submitted to show the pre-set mind condition, of the Commissioner to discard what was binding on him.

(v) On a consideration of the description in encyclopaedia, on what a Remote Control Facility should be constituted, as relied upon by Revenue and from the same, it would be evident that "remote control, requires a device called a command unit; by which the human operator sends signals that control the system" and it further explains that "kinds of remote control systems could be grouped according to the way the command unit sends signals to the system." For a TV Set, it specifies, "Infra-red remote control is used to operate such devices as TV sets and video cassette recorders (VCRs). A device called a photodetector receives the beam of infra-red rays from the command unit. The photodetector converts the rays into electronic signals, which control the on-off switch, channel selector, and volume." Which conclusively leads to a position that command unit is sine qua non for a remote control facility.

(vi) Therefore, the reliance of the JCDR on the following wordings in the Encyclopaedia : "A remote control television set has a device that sends a beam of infra-red rays to the set, above left. A photodetector converts the rays to an electronic signal and sends it to a remote control unit, above right. This unit controls the on-off switch, volume, and channel selector." that there is an infra-red window sensors and circuit, etc., and that should constitute remote control facility in the TV cannot be upheld. Since a remote control facility, is a system, as explained in the Encyclopaedia relied upon by the Revenue. The command unit, which is the hand held unit to send the signals, is an essential requirement of that control system. Without the hand held control unit, the system would not exist or and would be an incomplete facility. An incomplete remote control facility, is not what is contemplated in the notification, it contemplates a full system or complete facility. Therefore, TV sets with only the infra-red ray window consequential circuits inside, would not constitute to be a TV set 'with remote facility'.

(vii) If the hand held unit is not supplied/cleared along with the TV, then remote control facility and the quality of it being performed or the ease of performance of availing that facility would not arise. The word 'facility' as defined in New Webster's Dictionary of the English Language reads as follows :- "Facility. The quality of being easily performed or guided; ease in performance; readiness proceeding from skill or use; dexterity; freedom from difficulty; the means by which the accomplishment of anything is rendered easier; often pl. something built and activated to serve a particular purpose; as, the school's luncheon facilities." Therefore, an inbuilt provision for infra-red ray window, in the TVs, would not constitute to be a facility, since it is not be easy and be bothersome for the user/consumer, who could use the same after he obtains the frequency matched hand set from elsewhere.

Infact, the ld. Advocate has taken us through the statements on record, which admit to the position that certain buyers had not bothered to buy or procure such handsets. Therefore, in this view of the matter, it has to be held that the TV sets in question were complete as TVs but without the 'facility of remote control' when cleared from the factory.

(d) (i) The letter of the Department of Electronics, Government of India explains, that in an automatic assembly line of TV assembly, the component essentials are pre-programmed and it is difficult to eliminate a few of the components. Thereafter, they have come to their conclusions as pointed out by the ld. Advocate, for the appellants as extracted herein above. This letter also indicates, that the said view in the letter was issued, with the approval of Shri K. Roy Paul, Joint Secretary in the Department of Electronics, Government of India, New Delhi. It has been signed by an Additional Director. Therefore, the Commissioner's findings, as extracted herein above. On the consideration of this important letter, issued in consultation with a Joint Secretary to the Government of India, on the grounds that it is not authenticated by any Departmental/Gazetted Officer, therefore, its veracity was doubtful, needs to be rejected as rightly pointed out by the ld. Advocate that it exhibits a pre-set mind. The rejection by Commissioner, without any valid basis and without bringing on record, any other technical literature to challenge, this opinion of the Government of India experts, therefore can be safely lead to a conclusion, that the Commissioner has blindly gone ahead to confirm the view, as made out and put to him, by the investigators. He has not applied his mind independently.

(ii) The case laws relied upon by the ld. Advocate as regards binding nature of technical opinion in case of electronic goods, therefore, induces us, to hold that there is no material to uphold the Commissioner's finding, as regards the nature of the goods cleared. The only technical opinion on record, being this letter of Electronics Department of Government of India, binds us to a view that TVs cleared were without the facility of remote control.

(e) (i) Examining the second proposition whether the demand was barred by limitation of time, it is found that the Commissioner has come to the following findings as regards the same : "The contention of the noticees that the demand is time-barred and that no penalty is liable on them is also found baseless as they had indulged in organized evasion of duty by taking shelter under the argument that the 4 models of TV sets are cleared from their factory "without any remote control hand unit." (ii) The ld. JCDR for the Department relied upon the decision of Hon'ble Supreme Court in the case of Sri Vallabh Glass Works Ltd. [2003 (153) E.L.T. 494 (S.C.)] and Chemphar Drugs Ltd. [1989 (40) E.L.T. 276 (S.C)], to submit that the mere fact that classification lists were approved by the proper officer in the present case, would not lead to the conclusion that the time bar should be applied.

Since what was cleared in the present case, was the product, which have been shown in the classification list, relying on the Hon'ble Apex Court decision in the case of Shri Vallabh Glass Works Ltd., the clearance should be held without filing any declaration.

(iii) In the present case, after examining the Apex Court's decisions, as relied upon by the JCDR, it is found, that model numbers of the TVs were declared on the Classification lists, and these lists have been approved under the provisions of Central Excise Rule 173B(2). The rule at the relevant time stipulated, that the proper officer was required to conduct enquiries, as deemed fit.

Thereafter he was required to approve the list, with such modifications as were considered necessary. Only thereafter the assessee was required to determine the duty payable on the goods intended to be removed in accordance with such approved lists. It was not the case of Revenue at any stage, that the subject models of TVs, were removed without a declaration or that the Classification lists were not approved as provided under law. Therefore, it can be safely concluded that proper care and caution while approving the Classification list required to have been taken was taken, and the lists approved. Having approved the Classification lists, it would be not proper for the Department, now after considerable lapse of time, to turn around and put the blame on the assessee for mentioning the goods incorrectly. Even such wrong mention is not being upheld. Therefore, the reliance on Sri Vallabh Glass Works Ltd. case will not help the Revenue.

(iv) Following the catena of decisions, on this subject, we are of the opinion that the issue of time-limit should be held in the favour of the appellants, since the Commissioner has not come to a finding that the goods have been removed without payment of duty.

The Apex Court's decisions in the case of Chemphar Drugs Ltd. would be upholding the case of the appellants and not the case of the Revenue, as was pleaded by the ld. JCDR. The demands are therefore held to be barred by limitation, the Commissioner's cryptic finding thereon not withstanding.

(f) Once the issue on merits is not found to help the Revenue's case and the demands are found to be barred by limitation there can be no case or cause for penalty on the manufacturers and the other appellant herein i.e. Managing Director of the manufacturing company. The orders on penalty as arrived at are required to be set aside.

5. In view of the findings, the order is required to be set aside and appeals allowed with consequential relief, if any, as per law.