

Cello Household Appliances Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-12-2003

Reported in : (2003)(111)LC712Tri(Mum.)bai

Judge : S T Gowri, K Kumar

Appellant : Cello Household Appliances Ltd.

Respondent : Cce

Judgement :

1. The question for consideration in this appeal is the eligibility to exemption contained in entry 25 of the table to notification 15/94 of two articles manufactured by Cello Household appliances Pvt. Ltd., the assessee, and liability to penalty on it an on Pradeep Rathod, its director.
2. The items in question consist of trolleys and racks made of plastic The assessee had claimed their classification in heading 39.23 of the tariff as household articles of plastic. The Commissioner has classified the goods in heading 94.03 as items of furniture.
3. The trolley, which is sold either fitted with castors or without castors consists essentially of three or four columns about 40 cm length separating circular, or rectangular, on which articles can be kept. The appellant's contention is that it is more appropriately considered to be classifiable as a household article because it is bought and sold as household article and not as furniture. From its appearance

in design, it seems that the item in question is clearly an article of furniture. The product literature, which contains on its reverse instructions for assembling, contains a photograph of this article on which are placed telephones, books etc. The photograph shows its ability to rest on the floor. Its use is indicated to be in shops, homes, offices etc. The appellant's claim for the classification is solely on the ground that it is sold only in shops where household items are sold. It is difficult for us to accept that there are shops in town or city or villages, which sell only household articles. Nobody would go to purchase a household article. He could ask for a glass or other specific item that he wants. No evidence to establish this claim is also produced. In any event, the goods qualify for classification as furniture and that is the more appropriate classification. In its decision in *CCE v. GCL Equipments and Machines*, the Tribunal has held a trolley to be classifiable as item of furniture.

4. The rack, the other item, consists of two holding surfaces separated by plastic sides, about 30 cm in length. The legs are attached on the lower side of the bottom rack for its placement. It is contended that this article cannot be classified as furniture because it is designed not to be placed on the floor. Reliance is placed upon the general explanatory notes to Chapter 94 of the Harmonised System of Nomenclature. These notes provide that except for cupboards, bookcases, other shelved furniture and unit furniture, designed to be hung, fixed to the wall or to stand one on the other or side by side, for holding various objects or articles, separately presented elements of unit furniture, and seats or beds designed to be hung or fixed to the wall the term "furniture" does not apply to articles used as furniture or designed for placing on other furniture or shelves or for hanging on walls or from the ceiling.

5. The departmental representative contends that this is an unrealistic claim. He points out that there is nothing to show that this rack is designed by its manufacturer to be placed only on other items of furniture. He further points out that the household functions of a large majority of the population centre on the floor. Food is cooked on a fireplace lying on the floor, served and eaten on plates, on leaves kept on the floor. Members of the family sleeping on the floor. Such persons would buy this rack to keep it on the floor so that articles placed on it

would be conveniently accessible to them.

6. While it is contended that the rack is designed for placing on table top or kitchen counters, bathroom counters etc., there is no material produced to this effect. It is not possible for us to say that the rack in question is designed to be placed only upon any other furniture or in such places as kitchen counter etc. We have seen a sample of this product. We do not see why it cannot be used effectively when placed on the ground or floor. In the absence of anything to show that it is not designed for placing on the floor, and the submission of the departmental representative as to the large number of persons who would use this item on the floor, we do not think that these racks are more appropriately classifiable as household items. We also note that the cartons which packed the racks indicate the use of these goods in shops and offices also, apart from its use in kitchen and bathroom. On merits, therefore, the classification of these goods arrived at by the Commissioner has to be confirmed.

7. The notice dated 16.7.1996 invoked the extended period of limitation for demanding duty on goods cleared between 1.4.1992 and 30.4.1996. It is contended that the extended period of limitation will not be available because the appellant had made known to the department the manufacture of these goods by its declaration filed from 1993 onwards for the purposes of claiming exemption from licensing control and on the further ground that the goods had been examined by the officers.

The declaration that was filed for claiming exemption to licensing control on the ground that the value of the goods cleared by the assessee did not exceed as specified figure, the appellant had, against the column "Full description of the goods manufactured by the factory", mentioned the following. "Household articles of plastic of various types (non-insulated) bearing "Cello" brand - Ch. Sub-heading No.3924.90." In the total absence of the description of any of the goods, it is not possible to say that the appellant had intimated to the department the nature of the goods from which the officers could have concluded that they were not articles classifiable in heading 3924.90.

In fact the classification of the goods as household articles of plastic, flies against the appellant's own claim and the use in offices or shops goes against it. The further claim that the officers had examined the goods and therefore were aware of the classification is not acceptable. This claim is based upon the fact that A.R. 4 applications were filed in 1994 for export of two consignments of trolleys. In these A.R.4 applications, against the particulars of demand of duty, number and date of invoice under which duty was paid, the applicant has mentioned "nil" rate of duty under notification 15/94. We do not find it possible to conclude from this that when the loading of these goods into containers was being supervised by the officers, they were examining the classification of the goods. That was not their function, and this could not have constituted their intention. They were only required to verify whether the goods in question tallied with the description in the document. It is absurd to believe that during this process, the officers would have been expected to apply their minds to classification of goods. We therefore find that the extended period of limitation was available to the department.

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