

Sudhir Engineering Co. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-24-2003

Reported in : (2004)(92)ECC206

Judge : A T V.K., P Bajaj

Appellant : Sudhir Engineering Co.

Respondent : Cce

Judgement :

1. In this appeal, filed by M/s. Sudhir Engg. Co., the issue involved is whether the benefit of Notification no. 10/97-CE is available to D.G. Sets and control panels manufactured and removed by them.

2. Shri Naveen Mullick, learned Advocate, submitted that the appellants received an order for supply of one number of D.G. set and control panel from National Physical Laboratory (NPL) along with certificates issued by the Director, National Physical Laboratory in terms of Notification no. 10/97-CE certifying that the goods were required for research purposes; that Notification No. 10/97-CE exempts scientific and technical instruments, apparatus, equipments and accessories and spare parts thereof if these are supplied to the non-commercial research institutions subject to the conditions that an officer, not below the rank of the Deputy Secretary to the Govt. of India, certifies that the institution is not engaged in any commercial activity and the goods are required for research purposes only and the goods are covered by a Pass-book issued by the Department concerned

with which the institution is registered; that NPL is a research laboratory registered with the Govt. of India in the Department of Scientific and Industrial Research; that the D.G. set and control panel, installed in the said laboratory, are inseparable parts of the scientific and technical instruments, apparatus and equipments; that any research work of the type undertaken by NPL requires a power back-up in case of power failure and for which use of D.G. set and control panel becomes essential; that, accordingly, D.G. set and control panel are accessories to the equipments and apparatus used in NPL; that the term 'accessories' relates to such goods which act as an addition, an adjunct, an accompaniment; that it has been held by the Appellate Tribunal in the case of Insulation Electrical P. Ltd. vs C.C.E., Delhi-I, 2002 (51) RLT 135 that accessories are an addition, an adjunct and accompaniment for comfortable use of for adding elegance, while parts are essential pieces; that D.G. set and control panel as a power back-up adds to the proper, uninterrupted and efficient functioning of the scientific and technical instruments used for undertaking the research work being carried out in research laboratory. Reliance has also been placed on the decision in the case of P.L. Haulwel TRailers vs. C.C.E., Chennai, 2002 (142) ELT 204 (T), wherein the dispute was whether 12T payload trailer, required to carry the scientific equipment, was entitled for the benefit of Notification No. 10/97-CE; that the Tribunal, while extending the benefit of Notification, has held "any apparatus or equipments or accessories and spare parts of scientific and technical instruments are also covered in the Notification, So long as the apparatus and equipments required for using along with the scientific and technical instruments the benefit cannot be denied. There is a clear certificate issued by the Deputy Secretary to the Govt. of India (Department of Atomic Energy) to the effect that this item is being used as an apparatus for carrying scientific equipment. This satisfied the term of the Notification." The learned Advocate, finally, submitted that once the purchase order has been received by them from NPL, alongwith the requisite certificate, they had to clear the impugned goods without payment of duty in terms of Notification 10/97-Ce and accordingly duty cannot be demanded from them.

3. Countering the arguments , Sh. Vikas Kumar learned S.D.R., submitted that D.G. set and control panel cannot be regarded as accessories of scientific and technical instruments, apparatus and equipment as they are of general use; that

both the impugned goods are not within the purview of Notification No. 10/97-CE; that the decision in the case of P.L. Haulwell Trailers (supra) is not applicable as the trailer was specifically built for carrying the scientific equipment, namely, missiles whereas the D.G. Set and control panel cannot be termed as accessories of any scientific instruments; that similarly the decision in the case of Insulation Electricals P. Ltd. (supra) is not applicable as the rail assembly front seat adjuster/assembly slider seat and rear back seat lock assembly were accessories as they enabled the passengers and drivers of automobiles to adjust the seats for their comfort and convenience; that these were, no doubt, adjunct/additions to the seats for their better convenient, comfortable enjoyment/use, which is not the case with the D.G. sets and control panel.

4. We have considered the submissions of both the sides. Notification No. 10/97-Ce exempts accessories of scientific and technical instruments, apparatus and equipment. We find substance in the submissions of the learned S.D.R. that D.G. set and control panel cannot be termed as accessory of any scientific and technical instruments as these are installed for providing power back-up in case of electricity failure. The learned Advocate for the appellants has referred to the decision of the Supreme Court in the case of Mehra Brothers vs. Joint Commercial Officer, 2002-TaxindiaOnline - -SC wherein the Supreme Court has laid down the test to determine whether an article is an accessory or not. According to the Apex Court "the correct test would be whether an article or articles, in question, would be adjunct or accompaniment or an addition for the convenient use of another part of the main article or adds to the beauty, elegance or comfort for the use of main article or a supplementary or secondary to the main or primary importance. Whether an article or part is an accessory cannot be decided with reference to its necessity to its effective use of the article in question as a whole." The D.G. set and control panel, in question, cannot be treated as an adjunct or addition for the convenient use of scientific instruments/apparatus. The DG set and control panel may be required to provide the necessary power to the National Physical Laboratory, but these cannot be treated as accessories to any scientific and technical instruments. We, therefore, reject the appeal, filed by the appellants.