

T Vs. Electronics Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Feb-06-2004

Reported in : (2004)(167)ELT155Tri(Bang.)

Judge : G B Deva, M T K.C.

Appellant : T

Respondent : Electronics Ltd.

Judgement :

1. Whether the Cartridge Tape Drive is classifiable under Heading 84.71 of the Central Excise Tariff Act as claimed by the appellants, or under 84.73 as per the Department is an issue to be considered herein.
2. Shri Shiva Das appearing for the appellants submitted that the item in question is one of the machine transcribing data as on data media in a coded form and accordingly the item is classifiable under Heading 84.71.
3. On the other hand Shri Narasimha Murthy submitted that the party has claimed that item to be a unit of Automatic Data Processing machine and the plea has already been rejected by the Tribunal and the view taken by the Tribunal was upheld by the Supreme Court and accordingly department is justified in rejecting the claim of the party.
4. Shri Shiva Das submitted that for the relevant period the party has claimed the item as a machine transcribing data on to data media in a coded form. Accordingly

it is classifiable under 84.71 of the Central Excise Tariff Act. He said that earlier it was claimed as Automatic Data Processing, but now it is claimed as machine for transcribing data. Whether it fulfils second part of the description of the tariff entry 84.71 or not for classifying the item under relevant entry is an issue and that issue has not been examined. It was also submitted by him that there is no res judicata in the taxing statute to claim classification with the correct description for the subsequent period.

5. On a careful consideration of the submissions made by both sides and taking into consideration the fact that point at issue has not been properly examined by the adjudicating authority, we are of the view that the matter requires to be re-examined by the concerned adjudicating authority. The adjudicating authority is directed to examine whether the item in question is a machine transcribing data or not and to pass an appropriate order in accordance with law on providing an opportunity to the party. All the connected issues are kept open. Thus this appeal is disposed of in the above terms.

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