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Systronics Ltd. Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-22-2004

Reported in : (2004)(170)ELT485Tri(Mum.)bai

Judge : J Balasundaram, M T K.D.

Appellant : Systronics Ltd.

Respondent : Commissioner of Customs

Judgement :

1. The appellants herein imported a consignment of Silicon Photocell vide Bill of Entry dt. 12.8.1986 and sought clearance of the same under OGL Appendix 6(1) of AM 1985-88 Policy. The revenue was of the view that the goods were Photovoltaic Cell covered under Entry No. 555 of Appendix 3-A of the Policy and by required valid import licence for their clearance. On these the show cause notice was issued to them on 29.8.86 proposing confiscation and penalty. The Additional collector of Customs upheld the charge in the notice and hence confiscated the goods; however, the allowed redemption of the same on payment of a fine of Rs. 20,000/- as the goods were raw materials imported by actual user for manufacture of sophisticated electronics instruments. He held that the goods should be classified under Heading 85.41 of the Customs Tariff Act, for assessment purpose, and also imposed a penalty of Rs. 10,000/- on the importers. hence this appeal.

2. The appellants have asked for decision on merits hence we heard the Ld. JDR and perused the record. We find from the catalogue that the Photocell in question are made for use in medical instruments like Spectrophotometers. They are also known as photodiode detector because they are two elements one way conducting semiconductor junction. Their function is generation of voltage when light energy is thrown on the them. They convert incident light to electrical signal and do not convert light every into electrical energy, which is the function of Photovoltaic Cells. The finding of the Commissioner that the goods in question are Photovoltaic Cell as the catalogue describes that the goods make use of the Photovoltaic effect for the generation of a Voltage across a PN junction when the junction is exposed to light, is not sustainable as the goods do not convert light directly into electrical energy which is the function of photovoltaic cells. We are also seen the query letter issued by the Government of India Department of Electronics clarifying that "Silicon/Selenium Photo Cells" for detector applications are covered under entry No. 1 Appendix 6 of A.M.1985-88 Policy. We therefore hold that the goods are covered under OGL and set aside their confiscation.

3. In view of our finding that the goods are detectors for spectrophotometer and not photovoltaic cell, classifiable under Customs Tariff Heading 85.41 is set aside as this heading covered photovoltaic cells and not photo cells, and the goods are held to be classifiable under heading 90.27 of the Customs Tariff Act as claimed by the importers.

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