

Commissioner of Central Excise Vs. Johari Digital Health Care Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-31-2004

Reported in : (2004)(170)ELT418TriDel

Judge : A T V.K., M Bohra

Appellant : Commissioner of Central Excise

Respondent : Johari Digital Health Care Ltd.

Judgement :

1. The issue involved in these two appeals, arising out of two Orders-in-Appeal, is whether M/s. Johari Digital Health Care Ltd. are eligible to avail the benefit of exemption Notification No.21/2002-Cus.

2. Mrs. Charul Barnwal, learned S.D.R, submitted that the respondents had imported batteries and power cords and claimed the benefit of exemption Notification No. 21/2002-Cus., dated 1-3-2002 (Sl. No. 363 of the Table); that the goods were classified under Heading 85.44 of the First Schedule to the Customs Tariff Act and the benefit of exemption Notification was disallowed; that the Commissioner (Appeals) has, however, allowed the appeal filed by the respondents, on the ground that Serial No. 363 of the Notification allows concessional rate of duty to medical equipment and accessories thereof; that batteries and power cords are accessories of the medical equipments. She, further, submitted that batteries and power cords cannot be called accessories; that, as per Para 9.2 of the Exim Policy, 2002-2007, accessory means a part, sub-

assembly or assembly that contributes to the efficiency or effectiveness of a piece of equipment without changing its basic functions; that the respondents, in their letter dated 8-5-2003, mentioned that the impugned goods are parts of their equipment while in their subsequent letter dated 19-5-2003, they have claimed that the impugned goods are used as accessories of the medical equipment and without these, the Neuro Stimulation System cannot work; that this shows that the respondents themselves are not sure about their claim.

3. In Appeal No. C. 87/2004-NB(C), the respondents had imported battery chargers in respect of which also, the benefit of Notification No.21/2002-Cus. has been disallowed. The Commissioner (Appeals), under the impugned order dated 5-11-2003, has allowed the benefit of the notification on the ground that it can be classified as accessories of the medical equipment. Sh. H.C. Verma, learned D.R., has also submitted the same arguments, which had been submitted by the learned S.D.R in respect of battery and power cord.

4. On the other hand, Shri K.K. Anand, learned Advocate, submitted that all the impugned items, imported by them, are accessories to Neuro Stimulation System; that these items are accessories to the medical equipment; that medical equipment and accessories, thereof, attracted concessional rate of duty under Sl. No. 363 of Notification No.21/2002-Cus. whether they fall under Chapter 90 or any other Chapter of the Customs Tariff; that even if the impugned goods are classified under Chapter 85, benefit of Notification cannot be denied to them.

5. We have considered the submissions of both the sides. The Deputy Commissioner has denied the benefit of exemption Notification on the ground that the impugned goods are classifiable under Chapter 90 of the Customs Tariff and all these goods are classifiable under Chapter 85.

No other reason for disallowing the benefit of the Notification has been given in the Adjudication Order passed by the Deputy Commissioner.

As rightly emphasised by the learned Advocate that Serial No. 363 of the Notification No. 21/2002-Cus., applies to medical equipment and accessories thereof falling under Chapter 90 or any other Chapter of the Customs Tariff Act.

Mere fact that the goods, imported by them, are classifiable under Chapter 85 will not make them ineligible for the benefit of the exemption Notification. The Commissioner (Appeals) has rightly given his finding in Order-in-Original dated 28-10-2003 that the Adjudicating Authority has nowhere discussed the reason as to why the Notification would not be applicable to the impugned goods. Even before us, the Revenue has not brought out any material on record to show that the impugned goods are not accessories of the medical equipment. In view of this, both the appeals, filed by the Revenue, are rejected.

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