

Festo Measure Industries Ltd. Vs. Commissioner of C. Ex.

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SooperKanoon Citation : sooperkanoon.com/35235

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-13-2004

Reported in : (2004)(172)ELT38TriDel

Judge : A T V.K., P Bajaj

Appellant : Festo Measure Industries Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. In the above captioned appeals filed by the appellants against two orders-in-appeal both dated 31-7-2001 passed by the Commissioner (Appeals), the common issue regarding the correct classification of the goods known as "Steel Scales" manufactured by the appellants is involved. In Appeal No. E/2625/2002, the duty confirmed is Rs. 38,926/- for the period September, 1988 to February, 1989 while in the second Appeal No. 2624/2002, the period is from March, 1999 to August, 1999 and the duty confirmed is Rs. 66,944/- on the appellants who are engaged in the manufacture of steel scales. The classification of these scales, claimed by the appellants is under sub-heading 9017.10 being drawing and mathematics instruments, while according to the department, it should be under sub-heading 9017.90.

2. The learned Counsel has contended that the steel scales manufactured by the appellants are drawing and mathematical instructions as on the front side of the scales on the one edge, inches and on the other edge centimetres have been

engraved, while on the back thereof, conversion table, top drill tables, table and WWU & F. Calculations for solving the mathematical problems had been given and as such, these scales are nothing but drawing and mathematical instruments falling squarely under sub-heading 9017.10 of CETA. Since the goods fall under this sub-heading, carrying nil rate of duty, no duty demand against the appellants could be confirmed. Therefore, the impugned orders passed in both the appeals deserve to be set aside.

3. On the other hand, the learned SDR has contended that the scales manufactured by the appellants can be used only for drawing lines and measuring distance between the two points, are classifiable under only sub-heading 9017.90 which covers goods other than those falling under sub-heading 9017.10 of the CETA. Therefore, the duty at the rate of 16% as indicated against this sub-heading under the CETA, has been rightly confirmed against the appellants.

4. We have heard both the sides, gone through the record. In our view, the contention raised by the learned Counsel deserves to be accepted.

Heading 90.17 of the CETA relates to the classification of drawing, marking out or mathematical calculations instruments (for example, drawing, measuring, pantograph, protractors, drawing sets, slide rule, disc calculators instruments for measuring length for use in hand (for example measuring rods, tapes, micro meters, callipers) not specified or included elsewhere in this chapter. The sub-heading 9017.10 of this heading covers drawing and mathematical instruments. While sub-heading 9017.90 applies to "others". The authority below has classified under this Heading 9017.90 on the ground that the scales are primarily meant for measuring distance between two points and for that reason, cms/ inches had been marked on the front side of the scales. The scales can be termed as instruments for measuring length for use in hand. But we are unable to subscribe to this ground. The learned Counsel has produced one sample of the steel scale being manufactured by the appellants during the course of arguments and we have examined the same. We find that on its front side, on one edge inches and on the opposite edge, centimetres, have been engraved. On the back side, conversion table, top drill table and WWU and F calculations had been

displayed. That being so, it is difficult to hold that the scale is an instrument only for measuring length from one point to another, and for use in hand as opined by the authorities below. Rather it can be safely without any hesitation, concluded that it is mathematical instrument which is normally used in preparing drawings and solving geometrical and mathematical problems by students and professionals especially engaged in preparing drawings and solving the mathematical problems.

Therefore, the scales manufactured by the appellants squarely stand covered under sub-heading 9017.10 of the CETA as drawing and mathematical instruments.

5. The learned DR has referred to the HSN notes on Heading 90,17 to support the impugned orders that the scales manufactured by the appellants do not stand covered by sub-heading 9017.10. He has referred to Clause D(6) of that heading which relates to divided scales i.e.

school rulers including V shaped rules for measuring the diameter. But when confronted with the tables/calculations engraved on the scales in question, such as conversion table, lap drill tables, and WWU and F calculations, the learned SDR has not been able to justify as to how these scales fall under this heading. The HSN notes referred by the learned SDR, do not in any manner advance the case of the department for justifying the classification of the scales in dispute under sub-heading 9017.90 of the CETA. Rather, the scales manufactured by the appellants can be safely called/termed as drawing and mathematical instruments, as observed above, and as such are classifiable only under sub-heading 9017.10 of the CETA. Therefore, the impugned orders of the Commissioner (Appeals) holding the classification of the scales under sub-heading 9017.90 of the CETA cannot be sustained and are set aside.

Since under sub-heading 9017.10 of the CETA, nil rate of duty has been provided on drawing and mathematical instruments, no duty demand could be confirmed against the appellants for the periods in dispute in both the appeals and the same is set aside. Consequently, both the appeals of the appellants are accepted with consequential relief, if any, permissible under the law.