

Commissioner of Customs (Acc) Vs. Procol Electronics India Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-29-2004

Reported in : (2005)(180)ELT114Tri(Mum.)bai

Judge : S T S.S., A Wadhwa

Appellant : Commissioner of Customs (Acc)

Respondent : Procol Electronics India Ltd.

Judgement :

1. Revenue is in appeal against the order of CCE (Appeals), findings arrived to the effect - "The issue is whether the imported components can be considered a complete calculator by virtue of Rule 2(a) of Interpretative Rules.

I would like to refer to circular No. 44 87 dated 30.09.97 issued by the Department of Revenue. The issue dealt within the above circular is identical to the issue, in the present case. Page 5 & 7 of the above circular reads this: In the instant case, neither of the two conditions is fulfilled.

Firstly the components are subjected to further manufacturing process. These process are electronic cleaning, cutting and bending of components, mounting components on PCB, affixing of connectors, penalty, testing etc. The components are therefore in a semi finished state only. Further nature of various processes are much more versatile then simple assembly operations. The impugned goods therefore, may not be considered to have acquired the essential elaborator of the

finished products. Then, therefore are not covered by the application of Rule 2(a) of Interpretative Rules. The impugned goods are semi finished components only and shall qualify classification under heading 84. 73. I, therefore, set aside the impugned order. Goods shall be classified under heading (TH 8473." a) All the components that would go in and result in an electronic calculator are imported and presented for assessment simultaneously covered by two BE's both dated 11.12.97 in this case, only disc capacitors, PVC wires, self adhesives tapes were required in addition is the admitted position. It is also admitted by the Respondents that the Chip capacitors under import could be used in place of Disc Capacitors in the calculators. Thus all ingredients of an electronic calculator except for PVC wires and Self Adhesive Tapes have been imported and are to be assessed. Thus an import of electronic calculator in completely knocked down condition is established. Application of Rule 2(a) and the decisions of the Supreme court in the case of Sharp Business Machines [1990(49)ELT 640 SC] is called for. The law on the classification of such imports is now well settled by the Larger Bench decision in the case of Sony India Ltd. [2002(143)ELT 411 Tri- LB]. On finding that in the present case application of Larger Bench decision in case of Sony India Ltd would be applicable especially paragraph 33 thereof, and when in the present case the imports were not spread over in time, but presented simultaneously for assessment on the same date, an electronic calculator and not components on merits under the different headings of Central Tariff have to be assessed. Orders of the lower authority on classification are upheld and the orders of CC (Appeals) directing assessment of each component on merit is set aside.

b) The submission of the Respondents, before us on the processing conducted, subsequent to import do not impress us. These are not process incidental to complication of manufacture of the components as pleaded is rejected. The process are found to be in nature of unpacking the components preparing into individual pieces and preparing them for assembly of the calculator. There was no material before the CC (Appeals) or before us, to come to and conclude or uphold that the subsequent process undertaken after import amount to completion of semi-finished components. The plea made and the Commissioner order are not upheld.3. In view of the findings, the Revenue appeals is allowed, the CC (Appeals) order is set aside and the Addl. Commissioner order is confirmed.

