

Unitron Limited Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-13-2005

Reported in : (2005)(185)ELT200TriDel

Judge : S Kang, Vice, A T V.K.

Appellant : Unitron Limited

Respondent : Cce

Judgement :

1. This issue involved in this appeal, filed by M/s. Unitron Ltd., is whether Signal Generator manufacture by them is classifiable under Heading No. 90.30 of the Schedule to the Central Excise Tariff Act as claimed by them or under Heading 85.43 as confirmed by the Commissioner (Appeals) under the impugned Order and whether the extended period of limitation is invocable for demanding the duty.

2. Shri Y. Kumar, learned Advocate, submitted that they had cleared Signal Generators classifying the same under Heading 90.30; that on an objection raised by the audit they classified the impugned produce under heading 90.31 and started paying duty under protest; that a show cause notice dated 15.4.91 was issued for demanding Central Excise duty for the period 8.10.90 to 21.1.92; that another show cause notice dated 23.1.92 was issued proposing classification of the impugned product under Heading 84.43 instead of 90.31 which was followed by another show cause notice dated 31.3.92 demanding duty for the period July, 1991 to December, 1991; that corrigendum dated 2.4.92 was issued in respect of

show cause notice dated 15.4.91 by proposing classification under heading 85.43 and the differential duty was changed from Rs. 1,73,639/- to Rs. 2,60,460/-; that the Asstt. Commissioner vide Order-in-original dated 16.12.1992 classified the impugned product under heading 85.43 and confirmed the demand raised under both the show cause notices; that on appeal the Commissioner (Appeals), under Order-in-appeal dated 24.6.93, remanded the matters for afresh adjudication; that in the meantime 2 more show cause notices were issued for demanding duty; that the Asstt. Commissioner under the Order-in-Original No. 59/93 dated 28.3.97 classified the product under Heading 90.31 and dropped certain demands and only confirmed the demand of Rs. 1,73,639/-; that their appeal against the confirmation of demand was rejected by the Commissioner (Appeals) as well as by the Appellate Tribunal vide Order No. 276/2000-B dated 31.12.99. He further mentioned that the department has also filed an appeal before the Commissioner Appeals, which was dismissed; that however, the Tribunal vide Final Order No. 187/2001-B dated 28.2.2001 allowed the department's appeal by way of remand; that on remand the Commissioner (Appeals) under the impugned Order has classified the impugned Product under Heading 85.43 and confirmed the demand.

3. The learned Advocate submitted that Signal Generator cannot be classified under Heading 85.43 as it is an electronic and not electrical one; that the distinctions between the electrical and electronic are based on operating voltage, type of circuitry of electronic testing and measuring instrument as its circuits operates at low voltage, it has only electronic circuit and is used for testing and measuring appliance, electronic equipment and devices like radio, telecom and T.V.; that it is classifiable appropriately under heading 90.31. He also mentioned that the reliance of the department on HSN Explanatory Note is totally uncalled for as in Central Excise Tariff there is only single Entry 85.43 without further sub-heading whereas in HSN the heading is split into various sub-headings and as such it cannot be said that heading 85.43 in Excise Tariff is aligned with the said heading in HSN; that as per HSN, the electrical appliance and apparatus of heading 85.43 means having individual functions while the Signal Generator does not have individual function. Finally, he submitted that corrigendum dated 2.4.92 was issued for enhancing the amount of duty for the period 8.10.90 to 21.1.91; that this is not a corrigendum but a fresh show cause notice and is hit by time limit

specified in Section 11A of the Central Excise Act.

4. Countering the arguments Shri S.M. Tata, learned SDR, submitted that the Tribunal vide Final Order No. 187/2001-B dated 28.2.2001 has remanded the appeal filed by the Revenue to the Commissioner (Appeals) for afresh decisions on merit after hearing both the sides; that thus the Commissioner (Appeals) was well within his right to decide the classification of the impugned product afresh; that Explanatory Notes of H.S.N. below heading 85.43 clearly mentions that Signal Generator falls under the said heading; that the learned Advocate has not brought any material to show that the Signal Generators manufactured by them are different from the signal Generators mentioned in HSN Explanatory Note below Heading 85.43. He, therefore, contended that the impugned product is rightly classifiable under heading 85.43.

5. We have considered the submissions of both the sides. Heading 91.31 of the Central Excise Tariff applies to measuring or checking instruments, appliances or machines, not specified or included elsewhere in Chapter 90 whereas heading 85.43 applies to electrical machines and apparatus having individual functions not specified or included elsewhere in Chapter 85 of the Tariff. Heading 85.43 of HSN and Central Excise Tariff are similarly worded. Merely because heading 85.43 has been subdivided into various sub-headings does not mean that the heading 85.43 of the Central Excise Tariff which does not have so many sub-headings has not been aligned with H.S.N. Sub-headings are not independent of the main heading, they have been mentioned for the purpose of clarity and convenience. It is specifically mentioned in HSN Explanatory Note that Heading 85.43 includes Signal Generators which are apparatus for production of electrical Signals, of known wave form and magnitude at an assignable frequency (e.g. - high or low frequency). These include inter alia, impulse generators, pattern generator, wobulators (Sweep Generators). The Commissioner (Appeals) in the impugned Order has referred to the function of the impugned product, as observed by the Asst. Commissioner in Order-in-Original, according to which the function of the impugned product is to electronically/electrically generate signals of AF/RF frequency as per user requirement and its output can be measured in milli/micro volts which is called magnitude of the signal. The learned Commissioner (Appeals)

has given a very specific finding that "there is no basis difference in the description given in HSN notes or the findings of the Asstt. Commissioner." We agree with the learned SR that the Appellant have not been able to show that the Signal Generator Manufactured by them is in any way different from the Signal Generator mentioned in H.S.N. Explanatory Note below heading 85.43. Thus we do not find any reason to interfere with the classification of the impugned product ordered by the Commissioner (Appeals) i.e. 85.43 of the Central Excise Tariff.

6. It has not been disputed by the Revenue that the show cause notice dated 15.4.91 was issued demanding duty Rs. 1,73,639/- for the period 8.10.90 to 21.1.92 and corrigendum was issued on 2.4.92 by which the department changed the proposed classification from 90.31 to heading 85.43 and increased the quantum of duty to Rs. 2,60,460/-. We agree with the learned Advocate that these cannot be regarded a corrigendum to the original show cause notice dated 15.4.91 as not only the quantum of the duty demand has been enhanced, the very basis i.e. different classification has been proposed by the show cause notice. In view of this the notice dated 2.4.92 has to be regarded as a new show cause notice can be made by the Revenue only for the normal period of 6 months preceding the date of the show cause notice. But for this modification the appeal, filed by M/s. Unitron Ltd., is rejected.

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