Controls and Switchgears Vs. Commr. of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-01-2005

Reported in : (2005)(101)ECC316

Judge : S Kang, Vice-, N T C.N.B.

Appellant : Controls and Switchgears

Respondent : Commr. of C. Ex.

Judgement :

1. The common issue is involved in these appeals, therefore, are being taken up together.

2. The brief facts of the case are that appellants are engaged in the manufacture of Contactors, Overload relays, Electrical timers and accessories thereof falling under Chapter heading 8536.90 of Central Excise Tariff. Vide Notification No. 13/2002-CE. (NT), dated 1-3-2002 all the products of Chapter Heading 8536.90 were brought under MRP base levy under Section 4-A of the Central Excise Act, 1944. The show cause notices were issued to the appellants for demanding duty after assessing the goods under Section 4A of the Central Excise Act, 1944.

3. The contention of the appellants is that the goods in question are not for retail sale. These goods are for exclusive use of industries as a 'raw material' and these are not intended to be for retail sale, therefore, exempted under the Standards of Weights and Measures Act, 1976 (SWMA). The goods are liable for assessment

under Section 4 of the Central Excise Act.

4. The contention of the Revenue is that the goods in question are sold directly to the industrial consumer as well as sold through a network of dealers and the products are packed in the Unit size with all details about the description, model number, sketch/diagram name of the manufacturer etc. Therefore, rightly assessable under Section 4A of the Central Excise Act.

5. In this case appellants are not challenging the classification of the goods. The contention of the appellants is that these goods are not for retail sale. Therefore, are exempted under Rule 34 of Standards of Weights and Measures Act, 1976. We find that Rule 34 of Standards of Weights and Measures Act (Packaged Commodities) Rules, 1997 provides exemption in respect of certain packages if the making of the packages unambiguously indicate that it has been specially packed for exclusive use of any industries as raw material or for purpose of servicing of any industries. We find in the present case that on each package, it was specifically mentioned that it is specially packed for exclusive use of industries as raw material and it is only for industrial use and not intended to be displayed for sale at a retail outlet. The Revenue had not produced any evidence to show that the goods in question are meant for retail sale. In these circumstances, we find merit in the arguments of the appellants that goods are liable for assessment for the purpose of excise duty under Section 4 of the Central Excise Act.

The impugned orders are set aside and the appeals are allowed.