

Commissioner of Central Excise Vs. Orbit Park Inn Pvt. Ltd.

Commissioner of Central Excise Vs. Orbit Park Inn Pvt. Ltd.

SooperKanoon Citation : sooperkanoon.com/38212

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-22-2005

Reported in : (2005)(185)ELT83Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : Orbit Park Inn Pvt. Ltd.

Judgement :

1. Revenue has filed this appeal and the brief facts of the case as given in this appeal are as follows: "On going to the literature, the goods have been found to have application primarily in air conditioning only and thus it was classified in 8415.83 @40%+5%+CVD 30%. The goods appears to be under the restricted list of Export-Import Policy 1997-2002 and as such may be cleared against an SIL.

It seems from the literature that the heat exchange units are of three types:- (i) Concentric tube systems-one fluid flows in the annular internal, the other on the central tube.

(ii) A tubular system for the one fluid enclosed in a chamber through which flows the other fluid.

(iii) Two parallel serried of inter connected of inter connected narrow chambers formed of baffle plates.

The catalogue of the product describes it as a "modular tube-in-tank ice thermal storage system". The catalogue does not state that the product is heat exchanger. To make it a heat exchanger there ought to be two different fluids passing through two separate tubes or baffle plates as described above. In this case the water in the tube is frozen by passing pre-cooled glycol solution through the tubes submerged therein. As and when cooling is required the ice is melted by passing a warmer glycol solution. The cooling so achieved is then used to cool the air required for air-conditioning.

The product under import is a thermal storage device to be used in air conditioning and not as heat exchanger." 2. After hearing both sides and considering the issue, it is found that: (a) there is a false statement in the brief facts in the appeal filed by Revenue as seen from extracted verbatim hereinabove. The facts aver inter alia as follows: "The catalogue of the product describes it as a "modular tube-in-tank ice thermal storage system.

The catalogue does not state that the product is heat exchanger.

..." On a perusal of the catalogue, it is seen that on the first page itself, under the features of the product, it is mentioned "super efficient heat exchanger yields top performance", and at various places in the said catalogue, the product is stated to perform heat exchange functions and is called as a heat exchanger with specific performance functions.

The classification of the entity under Heading 8419.50 as heat exchangers as declared by the appellants, the lower authorities orders have been arrived at after appreciating Board's instructions vide F.No. 172/30/89/CX-4 as also the rival contentions campaigned by Revenue i.e. 8415.83. The order relies upon the concept of an air conditioning machine in terms of tariff description Heading 8415 to be one which contained (i) motor driven fan, (ii) elements for changing temperature as per the Tribunal's decision in the case of Universal Commercial Corporation 1994 (69) ELT 150 as also the lower authorities order is based on HSN Notes and their interpretation.

The detailed order as arrived at cannot be found fault with based on false averments made in this appeal that the entity under import in the catalogue is not stated to be a 'heat exchanger'.

(b) After perusal of the grounds, we find no material to induce us to upset the classification arrived at by the lower authorities to hold the product as a heat exchanger.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com