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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-24-2005

Reported in : (2005)(101)ECC169

Judge : A T V.K., P Bajaj

Appellant : Nokia India P. Ltd.

Respondent : Commissioner of Customs

Judgement :

1. In this appeal filed by M/s. Nokia India (P) Ltd., the issue relates to the classification of colour covers and memory cards for mobile phones imported by them. Shri A.R. Madhav Rao, learned Advocate submitted that the covers of cellular phones have been classified by them under Heading 8529.90 of the First Schedule to the Customs Tariff Act which covers "parts of cellular phones and radio trunking terminals"; that the Revenue has not challenged the classification of the products but has disallowed the benefit of Notification No.17/2001-Cus dated 1.3.2001 (Sl. No. 291) which provides concessional rate of duty in respect of parts of cellular phones and radio trunking terminals; that once the Department has not challenged the classification of the product as parts of cellular phones the benefit of the Notification should automatically be extended to them; that in any case, covers are nothing but parts of the cellular phones and these are parts suitable for use solely or principally with cellular phones only. He further submitted that the Commissioner (Appeals) has noted in the impugned order that as per the printed catalogue, cellular phone covers are optional accessories and can be purchased

separately and that the purpose of colour cover is only to change the colour and appearance of cellular phones if the user so desires; that the Commissioner (Appeals) has held that these covers are accessories and not parts and denied them the benefit of the Notification; that it has been held by the Tribunal in the case of Peshawar Soap and Chemical Works v. Commissioner of Central Excise, Chandigarh 2001 (138) ELT 855 that the classification of a product cannot be determined on the basis of certain characteristics of a product highlighted in its advertisement and the nature of the product and its description in the relevant tariff entry have to form the basis of classification. He also mentioned that the appeal filed by the Revenue against the said decision has been dismissed by the Supreme Court as reported in 2002 (142) ELT A 174 SC.2. The learned Advocate mentioned that the appellants had also imported memory cards which were classified by them under Heading 8529.90 of Customs Tariff as parts suitable for use solely or principally with cellular phones; that alternatively they have claimed the classification under Heading 8542.12 of the Tariff which deals with cards incorporating an electronic integrated circuit ("smart" cards); that subsequently when the Customs Tariff was amended in 2003 and was changed into 8 digit Tariff, memory cards had been classified under Sub-heading 8542.1020 which goes to show that these cards were classifiable all the time under Heading 8542 only.

3. Countering the arguments, Shri O.P. Arora, learned SDR submitted that the supplier of the covers for cellular phones are themselves treating the said covers as accessories which is apparent from the packing in which these accessories are packed wherein it is mentioned that "warranty for Nokia original accessories is 12 months. Use only Nokia approved accessories. Use of any other types may invalidate any approval or warranty applying to the phone and may be dangerous". The learned SDR contended that this is not an advertisement material which was the subject matter of the Tribunal's decision in the case of Peshawar Soap and Chemical Works; that once the covers are accessories, the benefit of the Notification No. 17/2001 is not available as the Notification speaks only of parts of cellular phones. Regarding classification of memory cards, he submitted that as per the website of World Customs Organisation, memory cards are classifiable under Heading 8523.90 and not under Heading 8542.12; that, therefore, the

matter may be remanded to the adjudicating authority to consider appropriate classification of the memory cards.

4. We have considered the submissions of both sides. It has not been controverted by the learned Advocate that the coloured covers in question are sold in the market as Nokia standard accessories and the packing material used by Nokia (HK) Ltd. clearly mentions that the warranty for Nokia original accessories is 12 months. It can, therefore, not be claimed by the appellants that these are not accessories but parts of cellular phones. The decision in the case of Peshawar Soap and Chemical Works, is not applicable as no advertisement is involved in this matter. The suppliers themselves have termed the impugned goods as accessories. As the Notification No. 17/2001 (Sl. No.291) only provides concessional rate of duty in respect of parts of cellular phones, we do not find any reason to interfere with the findings contained in the impugned order. The classification of the product in question may be decided in appropriate proceedings.

5. Coming to the classification of the memory cards, we find that the same are not parts of cellular phones warranting classification thereof under Heading 8529.90 of the Customs Tariff. We, however find force in the submission of the learned Advocate that memory cards are classifiable under Heading 8542.12 of the Tariff and not under 85.43 under which the Revenue has classified the same. Heading 8542.12 applies to cards incorporating an electronic integrated circuit ("smart" card). When the Customs Tariff was changed to eight digits from six digits, "Cards incorporating an electronic integrated circuit ("smart card") has been classified under Heading 8542.10 and the sub-heading have been made as under: It is thus apparent that the main heading "smart" cards has been sub-divided into SIM cards, memory cards and others which goes to show that memory cards were always falling within the description "Cards incorporating an electronic integrated circuit ("smart card"). We, therefore, hold that the memory cards are classifiable under Heading 8542.12 only. The appeal is disposed of in these terms.