Modern Communication and Vs. C.C.E.

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SooperKanoon Citation : sooperkanoon.com/39247

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-02-2005

Reported in : (2005)(186)ELT555Tri(Mum.)bai

Judge : R Abichandani, M T K.C.

Appellant : Modern Communication and

Respondent : C.C.E.

Judgement :

1. The appellants are manufacturer of Wide Band Line Amplifier and classified the said product under Heading 85.29 of the Central Excise Tariff Act. The Department issued show cause notice to them proposing to classify the same under Heading 85.43 and the adjudicating authority accordingly classified the product in dispute under Heading 85.43 and confirmed the demand of duty short paid by the appellants. On appeal before the Commissioner (Appeals), the Commissioner (Appeals) observed that, the Department had already proposed classification of the impugned goods under Heading 85.43 of the Central Excise Tariff Act and the same has been decided by the adjudicating authority. Therefore, the argument before him that the Trade Notice cannot be made applicable retrospectively, is not acceptable.

2. Shri K.V. Parmar, learned Consultant appeared for the appellants, pleaded that the Board has issued clarification which was communicated under Trade Notice No. 189/94, dated 20-11-1994, that the disputed goods will be classifiable under

Heading 85.43. This order of the Board was issued under Section 37B of the Central Excise Act. He, therefore, pleaded that the Trade Notice will be applicable from the date of the order of the Board and not retrospectively. He relied upon the decision of the Tribunal in the case of UMS Radio Factory Ltd. v. CCE, Coimbatore, .

3. Shri D.N. Choudhary, learned SDR, pleaded that, in this case, show cause notice was issued to the appellants much before the issuance of the Board's order under Section 37B for classifying the product under Heading 85.43 and the same was confirmed by the Asstt. Commissioner.

Therefore, there is no question of application of the Trade Notice retrospectively. He also stated that, in the case of UMS Radio Factory Ltd. v. CCE, Coimbatore, supra, the show cause notice was issued after issue of the Board's Circular arid modification of classification was proposed relying on Board's Circular, therefore, it was held that the Circular cannot have retrospective effect. But the situation in the present case is entirely different, therefore, the ratio of this decision is not applicable in the present case.

4. We have considered the submissions made by both sides. We find that the show cause notice proposing to classify the goods under Heading 85.43 was issued to the appellants much before the issuance of the Board's order under Section 37B. The Asstt. Commissioner confirmed the classification under Heading 85.43 and the demands for the differential duty. Since the decision of the Asstt. Commissioner is based on the show cause notice issued to the appellants and subsequently the same classification was also found correct by the Board by issuing order under Section 37B of the Central Excise Act, therefore, it cannot be said that the Board's order has been made applicable retrospectively.

In view of this, the decision of the Tribunal in the case of UMS Radio Factory Ltd. v. CCE, Coimbatore, supra, is not applicable in the present case.

5. We, therefore, do not find any merit in the appeal and the same is rejected.