

Premier Instruments and Controls Vs. Commr. of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Sep-08-2005

Judge : P Chacko, J T T.K.

Appellant : Premier Instruments and Controls

Respondent : Commr. of C. Ex.

Judgement :

1. The appellants, M/s. Premier Instruments & Controls Ltd. [PRICOL, for short], Coimbatore are manufacturers of measuring instruments and gauges falling under Chapters 84, 85, 87 and 90 of the Schedule to the CETA, 1985. During the period April to September 1995, they cleared shafts, gears, flywheel assemblies and printed circuit boards to their sister unit at Gurgaon (Haryana) on payment of duty at the rate of 10% ad valorem applicable to Heading 90.33 of the CETA Schedule. The department took the view that the shafts, gears and flywheel assemblies were appropriately classifiable under Heading 84.83, while the printed circuit boards merited classification under Heading 85.34, both attracting duty at the rate of 15% ad valorem. Accordingly, they issued a show cause notice demanding differential duty on the above clearances. The original authority and the first appellate authority upheld the department's view regarding classification of the goods and confirmed the demand of differential duty against the assessee. Hence the present appeal.

2. After hearing both sides and considering their submissions, we find that gears, shafts and flywheel assemblies were specifically covered under Heading No.

84.83, while printed circuits were specifically covered under Heading No. 85.34. It is the assessee's case that these goods were capable of being used only with the speedometers, manufactured by them and were actually cleared along with speedometers only. Since the speedometers (speed indicators) were classified under Heading 90.29, their parts and accessories were to be classified only under Heading 90.33. This claim of the assessee is based on the fact (as pleaded by them) that the subject goods were cleared along with speedometers. But it appears from the impugned order that Id.

Commissioner (Appeals) proceeded on the basis that the goods were 'separately presented'. However, he also noted that the goods were used in speedometers and certain other gauges. In the memorandum of appeal, the assessee has averred that the shaft was used only in speedometers.

The assessee has made contradictory averments with regard to the use of shafts, gears and flywheel assemblies manufactured and cleared by them.

In one part of the memorandum of appeal, they have stated that shaft and gear "are not made for use to regulate the speed". In another part, they say that shafts, gear and flywheel assemblies are "items useable only for purposes of transmission and regulating the speed". The appellants have also admitted that these goods are specified under Heading 84.83. Nevertheless, it is their case that shafts, gears and flywheel assemblies, usable only as parts of speedometer are classifiable under Heading 90.33. As regards printed circuit boards, it is submitted that they were cleared only as part of speedometer and cluster and, therefore, such PCBs should also be classified as parts of measuring apparatus under Heading 90.33.

3. Ld. Counsel for the assessee has relied on Note 2(a) under Chapter 90 of the CETA Schedule to submit that shafts and gears which are useable only as parts of measuring equipments can only be classified under Heading 90.33. Ld. Counsel has also relied on the following decisions of the Tribunal:CC v. Lakshmi Machine Works Ltd. 4. Ld. DR has sought to distinguish the instant case from that of Foundry Plant & Patterns (supra) by submitting that the gears and shafts of the assessee are not the same as 'worm gears' and 'worm shafts' manufactured by M/s. Foundry Plant & Patterns (P) Ltd. Ld. DR has also relied on HSN Explanatory

Notes.

5. After considering the submissions, we find that Chapter Note 2(a) *ibid* has a key role in classifying the subject goods : 2. Subject to Note 1 above, parts and accessories for machines, apparatus, instruments or articles of this Chapter are to be classified according to the following rules : (a) Parts and accessories which are goods included in any of the headings of this Chapter or of Chapter 84, 85 or 91 (other than Heading Nos. 84.85, 85.48 or 90.33) are in all cases to be classified in their respective headings; (b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading Nos. 90.10, 90.13 or 90.31) are to be classified with the machines, instruments or apparatus of that kind; (c) All other parts and accessories are to be classified in heading No. 90.33.

While *Id.* Counsel was harping on Clause (c) and the bracketed portion of Clause (a) of Note 2, *Id.* DR preferred to place reliance on Clause (a). It is an admitted fact in this case that shafts, gears and flywheel assemblies are specified under Heading 84.83. When compared to this entry, Heading 90.33 is far less specific for the said goods inasmuch as, for classifying the goods as parts and accessories for speedometers or other measuring apparatus, it requires to be shown that the said goods were actually cleared as parts of the measuring equipments as is discernible from the description of goods under Heading 90.33, which reads as thus : Parts and accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of Chapter 90 Insofar as the shafts, gears and flywheel assemblies manufactured and cleared by the assessee are concerned, the appeal memorandum itself seems to be equivocal on the question whether these goods were actually meant for use in speedometers. It has not been established that these goods were actually cleared as parts of speedometers. In the circumstances, by virtue of Chapter Note 2(a) *ibid*, the shafts, gears and flywheel assemblies in question can only be classified under Heading 84.83 whereunder these goods are specified.

6. As regards PCBs also, there is a specific Heading viz. 85.34. HSN Explanatory Notes under Heading 85.34 say that "circuits on which mechanical elements or electrical components have been mounted or connected are not regarded as printed circuits within the meaning of this Heading. They differently fall to be classified in accordance with Note (2) to Section XVI or Note (2) to Chapter 90 as the case may be".

In this case, the assessee has not claimed that any mechanical elements or electrical components were mounted on or connected to their printed circuits. They have only claimed that they were clearing printed circuit boards along with speedometers. According to the HSN Note, printed circuit boards on which no mechanical element or electrical component has been mounted or connected can be classified under Heading 85.34. Chapter Note 2(a) *ibid* also requires that printed circuit boards specifically covered under Heading 85.34 remain classified under that heading only.

7. In the case of Lakshmi Machine Works (*supra*), it was found that the printed circuit boards manufactured by the party was designed to work for a particular machine and hence it was not classified under Heading 85.34. In the case of Foundry Plant & Patterns (*supra*), the goods considered by the Tribunal for classification were 'worm gears' and 'worm shafts' made of plastic and these were held classifiable under Heading 90.33 as it was undisputed fact that the products were parts of speedometers and were used in the manufacture of speedometer. Thus the decisions cited by *Id. Counsel* cannot be followed in the instant case.

8. For the reasons which we have already recorded, we uphold the impugned order and dismiss this appeal.

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