

**Metro and Metro Vs. Cc**

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**SooperKanoon Citation :** [sooperkanoon.com/40929](http://sooperkanoon.com/40929)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Nov-29-2005

**Judge :** R Abichandani, M T K.C.

**Appellant :** Metro and Metro

**Respondent :** Cc

**Judgement :**

1. The appellant seeks interim stay of the order of the Commissioner (Appeals) upholding the order-in-original by which it was held that the benefit of the Notification No. 21/02 (Sl.No. 224 of list 34) cannot be extended to the goods under import. The appellant had classified the goods under CTH 84538000 and claimed benefit of Sl.No. 257 of Notification No. 21/02 (Sl.No. 224 of list 34), which was available to "viewing box for assessing visible damage" for shoes. The Bill of Entry No. 705032 dated 1.6.2004 was for clearance of one "set of X-ray shoe inspection system". The Bill of Entry was assessed provisionally, extending the benefit of the said Notification. Subsequently, on the basis of the report of Central Leather Research Institute, Chennai, and after issuing the show cause notice dated 19.8.2004, the benefit of the notification was denied to the appellants and they were required to deposit the different duty amount of Rs. 2,32,114/-.

2. The learned Counsel for the appellant contended that the machine viz. "X-ray Inspection System", which was imported by the appellant was Only an advanced version of the "viewing box for assessing visible damage", which was enumerated as Sl.No. 244 of List No. 34 in the exemption notification. He submitted that such

advanced version of the equipment was obviously covered under the said heading.

3. On going through the literature in respect of the viewing box for assessing visible damage, which is on record, it appears that equipment is used for assessment of damage in leather. The system is developed for assessing scuff damage to a leather and to test its resistance to scuffing. The specimen to view consists of a piece of a leather containing both scuff and unscuffed area which can be compared with one another. It is obvious from the literature pertaining to the viewing box that it is not designed for finding any latent defects in a shoe.

The literature in respect of the type of equipment which was imported by the appellant viz. 'X-ray Page 511 inspection system', which is on record, shows that it is used for inspection of the unseen and unwanted nails in the shoes and to find out the unseen broken needles at needlework area of leather goods. The inspection capacity of such X-ray inspection system is described as 3000 pairs of shoes a day. It is, therefore, evident that the X-ray inspection system, which is designed for finding latent defects in shoes and leather products is entirely different from a mere viewing box for assessing damage in leather. The CLRI by its letter dated 27.7.2004, had opined that X-ray box for assessing visible damage did not have x-ray provisions. In the x-ray shoe inspection system (shoe eye) a shoe can be kept inside its cabinet and can be viewed on a screen attached with the system, as noted in the letter dated 28.12.2004 of Central Footwear Training Institute.

4. In this view of the matter, the appellant has not made out any prima-facie case for staying the impugned order. The application is, therefore, rejected. If the amount payable under the impugned order is deposited within six weeks from today, the matter will come up for hearing in its due course. However, if the amount is not so pre-deposited, the appeal shall stand dismissed. Post on 16.1.2006 for reporting compliance.

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