Commissioner of Central Excise Vs. Plastart Electronics (i) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-08-2005

Judge : K Kumar, S T Chittaranjan

Appellant : Commissioner of Central Excise

Respondent : Plastart Electronics (i) Ltd.

Judgement :

1. Heard Shri Hitesh Shah, learned S.D.R. for the applicant Commissioner. None appeared for the respondents. The following grounds have been advanced in support of the appeal:- Commr. (A) has erred in not referring to the goods covered by the tariff description of CH 8529.00. CSH 8529.00 covers "Parts suitable for use solely or principally with the apparatus of goods falling under CSH No. 8525.00 to 8528.00". It may be seen that Hdg. No. 8525.00 covers "Transmission apparatus for radio-telephony, radio telegraphy, radio broadcasting or television whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras". The chapter subhdg No. 8526 deals with "Radar Apparatus, radio navigational apparatus and radio remote control apparatus chapter sub. Hdg. No. 8527 deals with the "Reception apparatus for radio telephony, radio telegraphy or radio broadcasting for radio telephony, radio telegraphy or radio broadcasting whether or not combined in the same housing with sound recording or reproducing apparatus or a clock", while CSH 8528.00 deals with "Television receivers (including video monitors and video projections) whether or not incorporating radio broadcast receivers or sound or radio recording

or reproducing apparatus." The products of the assessee are only meant for reception. So it does not fall under the CSH 8525 as the same is associated with Transmission (or reception for retransmission i.e. relay) of video signals. The CSH 8526 it only for Radar and Remote Control while 8527.00 is purely for Radio reception and not for video reception.

The CSH No. 8528 is only for TV's (colour, black & white or other monochrome). These include video tuners and projection apparatus as well as all types of TV viz. Domestic, industrial, aircraft, monitor, CCTV monitor, Text monitor etc. Now the basic requirement of a TV receiver is (a) Either a Cathode Ray Tube with a compatible glass screen in front; or (b) an LCD screen (flat). Without these the signals received can not be viewed. The disputed products, cannot be said to be a part of TV set as it does not become an essential part of any TV receiver for its function i.e. TV receiver/monitor could function well without the assessee's products.

For reasons stated above, the classification of impugned products under CH 8529.00 should have been ruled out by the Commr. (A).

Commr. (A) has also erred in not considering that the products are electronic in nature which has a clear and definite function i.e.

Direct reception of TV signals through a distribution antenna from satellites, processing of these signals and to purify its visual and audio quality through noise suppressors and signal amplifiers, with a final view to make it acceptable to more than one viewer who chooses to receive it on his TV receiver. Therefore, as these have individual function not specified elsewhere, the products are correctly classifiable under CSH 8543.00.

Commr. (A) has further erred in not considering section Note 2(a) under Section XVI which envisages that parts which are goods included in any of headings of Chapters 84 or 85 (other than heading Nos. 8485 and 8584) are in all cases to be classified under their respective heading. In view of his and the above points, the goods merit classification under CSH 8543.00.

Commr. (A) has also failed to consider the functions of the disputed products.

(a) Preamplifier -- The assessee have themselves stated that it amplifies the signal which is required to suit the input requirement of the distribution amplifier. This function is similar to that of TV Antenna Booster which has been correctly classified under CSH 8543.00.

(b) Attentuators -- To reduce the signal level. This is in the reverse direction. Hence, the function is the same as the above.

(c) Modulator -- As per the McGraw Hill Encyclopaedia of Electronics and Computers, 1982, the functions of the modulator is to vary the amplitude, frequency or phase of the carrier. Thus, the function is similar to that of amplifier, frequency converter etc., which are correctly classifiable under CSH 8543.00.

(d) As far as Channel Mixer and Channel pass filter, the functions of each are independent and not at all concerned with transmission.

Hence, it can not be said to be a part of the Transmission system therefore not classifiable under CSH 8529.00 as held by the Collr.

(A).

(e) Distribution Amplifier -- Amplification of signals is the function, hence classifiable under CSH 8543.00 (f) As far as the Ferrite bead -- line splitter, Directional tap off, consumer outlet Cable equaliser the functions are individual & hence classifiable under CSH 8543.00.

(a) Dish Antenna -- This product receives the signals & does not transmit the same. Hence not classifiable under CSH 8525/8529 but under CSH 8543.00 (b) Low Noise Block Converter Amplifies the signal & Hence classifiable under CSH 8543.00 as in the case of Boosters.

Commissioner (Appeals) also failed to consider the Order No. 37/13/94-CX dated 16-11-1994 passed by the Central Board of Excise & Customs in exercise of the power conferred by Section 37B of the Act. As per this order parts of CATV are classifiable under C.H. 8543.00. As per the OIA No. 195/94 the assessee has conceded that the products manufactured by them are part of CATV system.

Therefore, the products are correctly classifiable under C.H. 8543.00.

2. Learned S.D.R. also argues that identifiable goods under specific sub-headings cannot be classified under parts and he cites Section Note 2(a) to Section XVI, he also relies on the Hon'ble Supreme Court's decision in the case of Collector of Central Excise v. Delton Cables Ltd. -Cord - Coiled cord - PVC insulated tinsel thread fitted between receiver and main telephone apparatus - Assistant Collector classified goods in question under Heading 85.17 of Central Excise Tariff - Commissioner (Appeals) held that Section Note 2(b) of Section XVI ibid would only operate as a residuary clause after exhausting Note 2(a) ibid and accordingly, classified it under Heading 85.44 ibid - Tribunal reversed decision of Collector - Tribunal erred in wholly ignoring Section Note 2(a) and only considering applicability of Note 2(b) - Order of Tribunal set aside.

3. The learned S.D.R. also relies on the earlier decision of the Tribunal in the case of Fuji Electronics (MDU) (P) Ltd. v. C.C.E.Trichy -TV Boosters perform the function of boosting the TV signal which may be weak and the same is fed into the TV to get proper picture and quality of reception - TV set is complete without boosters and in trade boosters are not considered as a part of TV - It can at best be an accessory covered under Heading 85.43 of Central Excise Tariff Act, 1985 not under Heading 84.29 ibid.

4. We find merit in the arguments advanced by the department which have not been controverted before us by the respondents. Accordingly, we set aside the impugned order in appeal and order classification of the impugned goods under sub-heading 8543.00. Appeal of the department is allowed.