Controls and Schematics Ltd. Vs. the Commissioner of Central

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SooperKanoon Citation : sooperkanoon.com/45239

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Apr-02-2007

Reported in : (2007)(120)ECC377

Judge : S Peeran, J T T.K.

Appellant : Controls and Schematics Ltd.

Respondent : The Commissioner of Central

Judgement :

1. This appeal arises from OIA No 13/04 dated 29.10.04 by which the Commissioner has decided the classification of free standing pre-fabricated re-locatable Public Booth under Chapter Heading 73.08.

The finding portion of the Commissioner is reproduced herein below.

I have gone through the case records and submissions carefully. The Chapter Notes to Chapter 94 explains CHSH 9406.00 as "the expression 'Prefabricated buildings' means buildings which are finished int eh factory or put up as elements cleared together, to be assembled on site such as housing or work site accommodation officers schools shops sheds garages or similar buildings.

The impugned goods i.e., 'Telephone Booth' by no stretch of imagination can be called as a building. Building should mean a substantial structure such as a house, shop etc. A Telephone Booth is a structure that can be placed anywhere including a building and is a small enclosure enabling the user to make a call in private.

Building is a term applied to places where people dwell such as houses, shops, offices etc. The impugned goods are structures wherein people can only make a call and cannot be said as a place where people dwell. The question, assembling the structure at the site and dissembling it before dispatch from the factory is not of great consequence here as the goods are made up of bars, rods, angles, shapes, sections, sheets, plates etc by riveting bolting etc as averred by M/s Controls & Schematics Ltd themselves and exactly match the description of the goods covered by heading No 7308.00.

In view of the above observations, I hold that the impugned goods should be classified under Central Excise Tariff Act, 1985 Chapter Subheading No 7308.00 as proposed in the Show Cause Notice and not under Chapter Sub-Heading No 9406.00. The appellants are therefore required to pay the consequential differential duty.

The Party is aggrieved with the order and contend that the OIO No 43/00 dated 30.11.2000 passed by the Assistant Commissioner is a correct order deciding the classification under chapter heading 94.06 and dropping the demands. As can be seen from the OIO, the Assistant Commissioner has considered the submission of the assessee including the judgments rendered by the Tribunal to come to the conclusion that the item is a public booth which comes under specific heading 94.06 as a pre-fabricated public telephone booth. The finding recorded by the Assistant Commissioner is reproduced herein below.

On a careful and through examination of the issue, it is observed that the elements namely, Factory fabricated walls of Steel, Pre-fabricated doors, factory assembled floor boards and ceilings are independently manufactured and cleared in the site of their customers. Hence the final product named Public Telephone Booth comes into existence at the site of the customers. The said product is similar to a cabin for housing a public telephone with all the relevant fittings like a table, a chair etc., thus giving it a meaning of the pre-fabricated building as described under the Chapter notes of Chapter 9406 of the HSN. The said product does not appear to be a Steel structure as described in the chapter notes of 7308.90 in HSN, as the character of the structure is generally static in nature and cannot be moved to another place. Hence the definition of the structure as described in the HSN does not suit the product now under dispute. Hence it appears that the products "PRE-FABRICTED BUILDING (Free standing re-locatable Pre-Fabricated Public Telephone Booth) " is correctly classified under Chapter 9406.00 of the C.Ex. Tariff Act 1985.

2. The appellant in this appeal contend that the steel structures mentioned under Chapter 7308.90 and as per Explanatory notes under HSN are generally static in nature and cannot be moved to another building while particular public booth is movable and therefore the order passed by the (SIC) Commissioner is correct.

3. Learned DR submits that the item has to be treated as parts of iron/steel structures for classification under heading 73.08. He relies on the Larger bench judgment in the case of Mahindra & Mahindra Ltd. v.CCE Aurangabad .

4. We have considered these submissions. We find from the cited larger bench judgment that the issue did not pertain to classification of prefabricated structures but refers only to fabrication of iron/steel structures like roof frame of sheds or porta cabin at construction site and as to whether it is a movable property, or immovable property for purpose of excisability. The Commissioner has considered it as movable building and as coming under Chapter 73.08.

5. The Assistant Commissioner has examined the Explanatory HSN Notes and has clearly noted that there is a specific heading for pre-fabrication of building and structures and the item clearly comes within the said HSN Explanatory notes. Appellants have produced a copy of the HSN of the relevant chapter heading. On perusal, it clearly indicates that the telephone booths clearly come within the Chapter heading of 94.06. The order passed by the Assistant Commissioner is correct one and reasoning adopted by him is required to be accepted.

The Order of the Commissioner (appeals) is not correct and the same is set aside by allowing the appeal with consequential relief if any.