Commissioner of Central Excise Vs. S.N. Traders

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-28-2008

Judge : S Jha, a T K.K.

Appellant : Commissioner of Central Excise

Respondent : S.N. Traders

Judgement :

1. This appeal by the Revenue is directed against the order-in-appeal of Commissioner (Appeals) setting aside the order-in-original of the Jt. Commissioner.

2. The dispute relates to wrist watches bearing brand name 'Classic'.

The respondent is said to be engaged in the manufacture of assembling of wrist watches during the period under dispute. During 1998-99 they assembled 11146 pieces of watches and cleared them without payment of duty. A show cause notice was issued calling upon the respondent to pay duty of Rs. 1,46,268/- including Rs. 25,032/- which had already been paid. The Joint Commissioner confirmed the demand to the extent of Rs. 1,11,608/- with interest in terms of Section 11AB of the Central Excise Act. He also imposed penalty equal to the amount of duty of Rs. 1,11,608/- under Section 11AC of the Act. The Jt. Commissioner held that the items are covered by chapter sub-heading 9102.90 of the Schedule to the Central Excise Tariff Act, 1985. On appeal by the respondent, the Commissioner (Appeals) took the view that in terms of Note 2 to Chapter 91, for the purpose of classification under heading 91.02, wrist watches must have case of base metal/precious metal, and taking into account the value of the wrist watch viz. Rs. 150/- per wrist watch, the watches could not fall under Chapter sub-heading 91.01 and 91.02 of the Schedule, and they were appropriately classifiable under sub-heading 91.10.

3. We find that the conclusion of the Commissioner (Appeals) is based on a complete misreading of sub-heading 91.10. The said entry refers to "complete watch or clock movements, unassembled or partly assembled (movement sets); incomplete watch or clock movements, assembled; rough watch or clock movements". It is clear that the word 'movements' is to be read as common to both watch and clock and therefore the 'movement' i.e. the inner parts of a watch or clock - whether complete or incomplete/assembled or partly assembled or unassembled - would fall under the said entry. In the instant case, the subject goods was the result of a process viz. assembling process/activities carried on by the respondents resulting in a new product i.e. complete wrist watch.

Wrist watches find mention in Chapter heading 91.01 and 91.02. For the sake of easy reference the entries may be quoted verbatim as under: Wrist watches, pocket-watches and other Watches, including stop-watches, with case of precious metal or of metal clad with precious metal Wrist-watches, pocket-watches and other Watches, including stop-watches, other than those of heading No. 91.01 4. On a plain reading it is evident that all wrist watches, pocket watches and other watches including stop watches having case of precious metal or of metal clad with precious metal would fall under entry 91.01 while all wrist watches, pocket-watches and other watches, including stop-watches, "other than those of heading No. 91.01" would fall under heading 91.02. In the instant case, having regard to the value of the product, there is no difficulty in concluding that the goods will not fall under heading 91.01 and as such, they would fall under heading 91.02 which is the residuary heading for the item 'watches'. On a combined reading of the two headings, there is no doubt that all wrist watches, pocket watches, and other watches including stop-watches not described under heading 91.01 would fall under heading 91.02 and therefore the product in question which is a complete wrist watch would be classifiable under heading 91.02. The Jt. Commissioner had classified the goods under sub-heading 9102.90 i.e. 'other' .

Sub-heading 9101.10 being ''Braille watches', it is clear that the product would fall under the sub-heading 'Other' i.e. 91.01.90. In other words, the Joint Commissioner had correctly classified the goods and the Commissioner (appeals) committed error in reversing his older.

5. In the result, we set aside the order of the Commissioner (Appeals), uphold that of the Jt. Commissioner and thus allow the appeal of the Revenue.