

Collector of Customs Vs. Tata Electronic Development

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-21-1990

Reported in : (1990)LC520Tri(Delhi)

Appellant : Collector of Customs

Respondent : Tata Electronic Development

Advocate for Def. : Shri. G. Sampath

Judgement :

1. This appeal is directed against the order of the Collector of Customs (Appeals), Madras, dated 22-5-1989 and the appellant herein is the Collector of Customs, Bangalore. The facts in brief are that the respondents herein M/s. Tata Electronic Dev. Services imported a consignment of Heat Shrinkable Sleeves valued at Rs. 3,19,067/- for which the Bill of Entry was filed in December, 1988 at the Air Cargo Complex, Bangalore. The respondents claimed exemption for the goods under Notification 206/76 against S. No. 5(i) and (ii) as Radar spares and accessories by producing duty exemption certificate from the Ministry of Defence and claimed duty free assessment. It was their claim that the shrinkable sleeves were in 1.2 metres length per piece and were therefore component parts. After hearing them in the matter the Asstt. Collector of Customs Air Cargo Complex held, on examination of the goods, that the heat shrinkable sleeves were found to be in running length and that they were only raw material, and as such, were not covered by Notification 206/76 S. No. 5(i) and (ii) as the same covers only spares, accessories and not raw material. The respondents filed an appeal against this

order before the Collector (Appeals), Madras who allowed the appeal and set aside the Assistant Collector's order holding that the goods imported were eligible for exemption under Notification 206/76.

2. Appearing for the appellant Collector the learned D.R. Shri Sohal contended that the goods had been examined by the Asstt. Collector and were found to be in running length. Therefore, the goods were only raw material and the Notification 206/76 cannot apply to the goods which are in the nature of raw material. On the other hand, Shri G. Sampath, learned counsel for the respondents urged that the goods were not raw material and pointed out that respondents had produced catalogue of the foreign supplier to show that the goods were cable accessories. The order has been placed on the supplier for supply of heat shrinkable sleeves in numbers and not in length. He further pointed out that the goods were as per the purchase order which were to be supplied for Defence purposes duly certified by the Min. of Defence. This was not raw materials because they were used directly in the cable assembly without any re-work on them. Shri Sohal, learned D.R. contended in reply that even in pieces of 1.2 Metres the goods will or accessories not be considered as components or accessories but will still be only in the nature of raw material and even if they are to be taken as component part, they were of general use, being in the nature of conduits, used for insulating electric cables and not in the nature of cables used in Radar. Therefore, on this ground also they cannot be deemed to be accessories or parts of Radar eligible for duty free assessment under Notification 206/76.

3. We have carefully considered the submissions made by the learned D.R. and the learned counsel. The Asstt. Collector had held that the goods, namely heat shrink-able sleeves were in running length and on this ground held them to be raw material ineligible for exemption under Notification 206/76. Examining this contention of the department we find that the general certificate dated 11-11-1988 which is endorsed by the Govt. of India, Min. of Defence certifies that the import of components parts as per attached Annexure-I of Radar equipment was on behalf of M/s. B.E.L. against firm order for exclusive use by Defence Department, Govt. of India. A perusal of the Annexure-I which is also endorsed by the Govt. of India, Min. of Defence shows that under the heading "Connectors" against S. Nos. 99 to

102 at page 4 of the Annexure-I the description of the goods is relatable to heat shrinkable sleeves which gives the type, size, colour and part number. The order of the respondents placed with the supplier for the material M/s. R.S.Components Ltd., U.K., dated 29-9-1988, which is available in the record, is also for the goods citing the same part number and against the quantity order in all these cases it has been stated "840 Metres (700 numbers)", and the unit price in U.K. is quoted as per 1.2 Metres.

Therefore, it is clear that the order has been placed in quantity for 700 numbers of 1.2 Metres of the heat shrinkable sleeves bearing the part number in the purchase order. We have also perused the literature of the supplier relating to the goods which shows these part numbers are given to the goods under the heading 'cable accessories' and the catalogue shows that the length of each item bearing the part number imported is 1.2 Metres with various bore size in M.M. The literature further shows that such sleeving because of their quality of resistance to heat abrasion and resistance to corrosion may be used in applications where mechanical protection of wires, cables and solder joints is required for component covering or strain relief applications. It is also seen from the true copy of Customs Examination Report on the relevant Bill of Entry that the goods on examination were found to contain plastic sleeves as per Invoice dated 16-11-1988. We have already seen that the order itself was for such sleeves in numbers of 1.2 Metres each. According to the write-up given by the respondents, it has been stated that these sleeves are intended to be used on the inter-cable assemblies and that they are used directly in such assemblies without any re-work. These facts are undisputed by the department. Therefore, from consideration of the aspects of the case available on record as above, it is found that the goods have been certified by the Defence Ministry as imported against firm orders for exclusive use by the Defence Department. The Annexure to the certificate shows that the heat shrinkable sleeves are indicated by specific part numbers. The order has been placed with reference to these part numbers and not in running length but in quantity. The supplier's catalogue also indicates the goods as cable accessories with the same part numbers each having length of 1.2 Metres per piece. In the face of such findings, we are of the view that the stand taken by the department, that the goods are only in running length and are therefore, in the nature of raw material and that

on that score the goods are ineligible for exemption under Notification 206/76, is unsustainable. The ground that the sleeves being of general purpose use will not be eligible for concession at all, is not a ground taken by the Asstt. Collector in his order and therefore, on such a question of fact, the department cannot, in law, raise such a question of fact for the first time before the Tribunal, and as such, this does not fall for consideration by the Tribunal. The cross objection filed by the respondent is supportive of the impugned order, and since the respondents are not aggrieved by any part of it, such a cross objection is mis-conceived, and is rejected as such. The appeal is disposed of accordingly.

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