Collector of Central Excise Vs. V.S. Engineers

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-06-1993

Reported in : (1994)LC96Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : V.S. Engineers

Judgement :

1. These three appeals have been filed against the order passed by the Collector of Central Excise (Appeals), Bombay. The respondents are engaged in the manufacture of "Fuse Switches" of various types. They filed a classification list for their product, claiming assessment @ 15% ad valorem under sub-heading 8536.90 read with Notification No.160/86, dated 1-3-1986. The Assistant Collector vide his order dated 21-5-1987 approved the classification of 'Fuse Switches' under sub-heading 8536.90 but held that the goods not being eligible for exemption under Notification No. 160/86 were assessable @ 20% ad valorem. Being aggrieved by the order passed by the Assistant Collector the respondents filed an appeal before the Collector of Central Excise (Appeals), Bombay, who vide his order dated 16-12-1988 held that the product in question was classifiable under Heading 85.37 and assessable to duty at the rate of 15%. Being aggrieved by the order passed by the Collector, Central Excise (Appeals) the Collector has filed this appeal. The respondents have also filed cross-objection.

2. On behalf of the appellants the learned JDR Shri M.S. Arora appeared before us. He submitted that the Collector (Appeals) had erred since these switches

being usable on Panel Boards are more appropriately classifiable under Heading 85.38 which covers parts suitable for use solely or principally with the apparatus of Heading 85.35, 85.36 and 85.37. He contended that merely because the said product can be used only on Panel Board, it does not become a part of Panel board under Heading No. 85.38. He stated that if 'Fuse Switch' is treated as a part of Panel board then by analogy Volt-Meters, Ammeters (Heading No.90.30) or Switches (8536.90) designed to be fitted on boards, panels etc., will become part of panel board, etc., which is incorrect. The product in question is used to protect the circuit and installations from overload and short circuits. Heading No. 85.36 covers electrical apparatus for switching or protecting electrical circuits. From the printed literature of the product similar products manufactured by M/s.

English Electric Co. of India Ltd., it was clear, that it has quick made and quick break mechanism and the unit has ON/OFF indicator. He also pointed out that the function of the Switch is also to make or break connections/contacts. Therefore the function of the said product is similar to that of switch, falling under Chapter Heading 85.36. He submitted that the product 'Fuse Switch' will merit classification under Heading No. 8536.90 attracting duty at the rate of 20% ad valorem. He stated that the Order-in-Appeal passed by the Collector of Central Excise (Appeals), Bombay in classifying the product 'Fuse Switches' under Chapter Heading 85.38 as a part of Panel Board, is incorrect and prayed that it may be set aside and the order passed by the Asstt. Collector of Central Excise be restored.

3. On behalf of the respondents Sh. M.H. Patil, the Learned Advocate stated that the fuse switch being manufactured by the Respondents is an item which is incomplete in itself and cannot be put to use without incorporation of external devices like fuses, links etc. and for this reason it is not a complete independent switch and cannot perform the function of making and breaking connection of electrical circuits or protecting them from electrical short circuits without HRC fuses. He added that the Respondents are supplying these fuse switch units without incorporation of HRC fuses which at the time of installation in control panels are used. These fuse switches can only be used on control panels, boards, consoles, desks, cabinets and other bases and unlike any other switch, these fuse switches do not carry out any function other than acting as a protective device like

relays, contractors, circuit breakers etc. which are charged to Central Excise Duty at the rate of 15%. He stated that switches viz. piano type switches, rotatory switches, system selector switches, etc., can be fitted directly on current and carry out the function of switching on and putting off the current, i.e. making and breaking the circuit, but fuse switches do not carry out this function independently and can be used only as accessory in control panel as a protection device. He contended that under these circumstances fuse switches would be classifiable under sub-heading 8536.90 read with Notification 160/86 as held by the Asstt. Collector.

4. On 27-9-1993 Shri S.K. Sharma, the learned JDR while addressing arguments in rejoinder reiterated the submissions that were made by Shri Arora. After conclusion of the arguments both sides drew the attention of the Bench to Order No. E/150 to 158/93-B1, dated 28-6-1993 passed by Tribunal in the case of Havell's Industries v. CCE, New Delhi 1993 (68) E.L.T. 353 (Tri.), in which it has been held that 'fuse switches' are classifiable under Heading 85.37.

5. We have examined the records of the case and considered the submissions made on behalf of both sides. We find that in Order No.E/150 to 158/93-B, dated 28-6-1993 in the case of Havell's Industries v. CCE, New Delhi 1993 (68) E.L.T. 353 (Tri.) , the Tribunal has held that switch fuses and fuse switches are appropriately classifiable under Heading 85.37. Paras 2 and 6 of the said order being relevant are reproduced below :- "2. Shri A.K. Jain, the learned Advocate appearing for the appellants submitted that the main dispute is in respect of classification of the product viz. change over switch in all the appeals and also whether it is excluded under the exclusion clause of the Notification No. 160/86-C.E., dated 1-3-1986 to deny the benefit of exemption under the Notification. He said that the dispute with reference to switch fuses and fuse switches is also involved in Appeal Nos. 5438/92 and 5439/92. The Principal Collector had accepted the claim of the appellants in relation to all the disputed items including 'fuse switches' and ' switch fuses except for change over switches as can be seen from the respective orders but the Asstt. Collector disallowed the benefit at a later date that too under the same classification list for the subsequent period and the same was confirmed by the Collector (Appeals) in spite of the fact that decision of

the Principal Collector was brought to the notice of the concerned Authorities.

6. On a careful consideration of the submissions made by both the sides with reference to the facts of the case and on perusal of the records, we are not inclined to remand the matter on the issue with reference to classification of the products viz. switch fuses and fuse switches as requested by the Departmental Representative. We find that this issue was well considered by the Principal Collector in his respective orders. Accordingly, concurring with that view we hold that switch fuses and fuse switches are appropriately classifiable under Heading 85.37 even in Appeal Nos. 5438/92 and 5439/92 as it was rightly argued by the Appellants' Counsel".

6. We follow the Tribunal's decision quoted above and hold that 'fuse switches' manufactured by the Appellants are classifiable under Heading 85.37.