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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-23-1995

Reported in : (1995)(78)ELT267TriDel

Appellant : Zenith Limited

Respondent : Collector of Central Excise

Judgement :

1. This is an appeal against the order dated 28-7-1986 passed by the Collector of Central Excise (Appeals), Bombay. The appellants filed a Classification List effective from 13-3-1980 in which they declared 'Micrometers' falling under Item 68 of the erstwhile Central Excise Tariff and claimed exemption of the said goods in terms of Notification No. 55/75-C.E., dated 1-3-1975 which covered "Drawing and mathematical instruments". By this order dated 4-12-1980 the Assistant Collector rejected the appellants' claim that 'micrometers' were mathematical instruments. While approving the classification of 'micrometers' under Tariff Item 68 he held that they were not eligible for exemption under Notification No. 55/75-C.E., dated 1-3-1975. Being aggrieved by the order passed by the Assistant Collector, the appellants filed an appeal before the Collector Central Excise (Appeals) who by the impugned order confirmed the Assistant Collector's finding that 'micrometers' are not mathematical instruments covered by Noti-fication No. 55/75-C.E., dated 1-3-1975. The Collector (Appeals) also held that 'micrometers' being measuring tools, were not classifiable under Tariff Item 68.

2. Appearing on behalf of the appellants Shri Kamal Parsurampuria, learned Advocate submitted that the finding of the Collector (Appeals) that 'micrometers' were not known in the trade parlance as 'mathematical instruments' was not based on evidence. He submitted that the lower authorities had not given any finding on the opinion of Shri R.J. Seth Management Consultant, according to which 'micrometers' have to be treated as 'mathematical instruments' He added that even the relevant notes under Heading 90.16 of the Brussels Trade Nomenclature (BTN), support the appellants' claim that 'micrometers' fall in the category of 'mathematical instruments'. He contended that 'micrometers' being designed for accurate measurement with the help of vernier scale have to be treated as 'mathematical instruments'. On these grounds, he pleaded that the impugned order was not sustainable. He submitted that no duty was recoverable on the said goods since the Assistant Collector's order holding the 'micrometers' as classifiable under Tariff Item 68 attracting duty at 8% ad valorem was not approved but the Collector (Appeals) who while holding that 'micrometers' were instruments not classifiable under Tariff Item 68 had failed to decide the classification of the goods.

3. On behalf of the respondents, Shri M.K. Jain, learned SDR stated that 'micrometers' being precision measuring instruments were correctly classifiable under Tariff Item 68. He added that 'micrometers' were correctly held as not eligible for exemption in terms of Item 5 of Notification No. 55/75-C.E., dated 1-3-1975 since they did not fall in the category of "mathematical instruments". In support of his contention he referred to meaning of 'micrometer' in McGraw Hill Dictionary of Scientific and Technical Terms, according to which 'micrometer' is an instrument meant for making precise measurements. He contended that the opinion of Shri R.J. Seth. Management Expert and the relevant notes to Heading No. 96.10 of BTN relied upon by the appellants were not relevant for the purpose of determining the eligibility of the goods in question for exemption under the relevant notification. He contended that 'micrometers' being instruments they were correctly classifiable under Tariff Item 68 as held by the Assistant Collector. He stated that the question of the classification of the goods was not disputed before the Collector (Appeals). He contended that under these circumstances the finding that they were not classifiable under Tariff Item 68 may be set aside.

4. We have examined the records of the case and considered the submissions made on behalf of both sides. It is seen that the only question arising for consideration in this case is whether 'micrometers' could be deemed as 'mathematical instruments' classifiable under Tariff Item 68 and eligible for exemption under Notification No. 55/75-C.E., dated 1-3-1975.

5. The appellants' case is that the 'micrometers' in question being 'mathematical instruments' were covered by the entry "Drawing and mathematical instruments" in Notification No. 55/75-C.E., dated 1-3-1975. In support of their contention that 'micrometers' fall in the category of mathematical instruments the appellants have relied on the written opinion of Shri R.J. Seth, Management Consultant. In our view the opinion given by Shri R.J. Seth, at the instance of the appellants, cannot be of any assistance to them since Shri Seth is only a Management Consultant and he is neither a technical expert in the field of instrumentation nor a person belonging to the trade which deals with such goods. The notes under Heading 90.16 of the BTN relied upon by the appellants are also not relevant since the relevant Central Excise Tariff was not aligned to BTN and even otherwise it is well settled that the notes to BTN and HSN are not relevant for the purpose of the interpretation of an exemption notification.

6. From the following extracts form the McGraw Hill Dictionary of Scientific and Technical Terms, it is seen that a 'micrometer' is only an instrument for making measurements.

"micrometer (ENG) 1. An instrument attached to a telescope or microscope for measuring small distances or angles. 2. A caliper for making precise measurements : a spindle is moved by a screw thread so that it touches the object to be measured; the dimension can then be read on a scale. Also known as micrometer caliper. (MECH) A unit of length equal to one-millionth of a meter. Abbreviated qm. Also known as micron (q).

It is also seen that the Shorter Oxford English Dictionary defines 'Mathematical' as "of or pertaining to, relating to or of the nature of mathematics, used in mathematical operations". Since 'micrometer' is only an instrument designed for making precise measurements and not for carrying out any mathematical calculations or operations, it is evidently not a mathematical instrument. According to the same dictionary the word "Tool" means "any instrument for manual operations; a shaping implement for working upon something, as by cutting, striking, rubbing or other process, in any manual art or industry." Hence it follows that a 'micrometer' cannot be deemed as a 'tool'. We therefore hold that the Appellate Collector's finding that 'micrometers' were 'measuring tools' not classifiable under Tariff Item 68 was erroneous.

7. In view of the foregoing it follows that 'micrometers' being 'precision measuring instruments' were classifiable under Tariff Item 68. However, in the absence of any evidence that 'micrometers' are 'mathematical instruments we hold that they were not eligible for exemption under Notification No. 55/75-C.E., dated 1-3-1975.