

Unipex Electronics Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-13-1995

Reported in : (1995)(79)ELT146TriDel

Appellant : Unipex Electronics

Respondent : Collector of Central Excise

Judgement :

1. This appeal is against the order of the Collector of Central Excise (Appeals), New Delhi. By that order the Collector confirmed the finding of the Assistant Collector of Central Excise that Modvat credit taken on inputs used in "two-in-ones" could not be utilised towards payment of duty on tran-sister radios. He also confirmed the findings of the Assistant Collector that credit taken on inputs could not be utilised towards payment of duty on cassette player which were not declared as final product.

2. I have heard Shri K.J. Ghairat, Advocate for the appellant and Shri B.D. Bhagat JDR for the Collector.

3. It is the appellant's claim that there was a combined RG 23A register maintained. There is no one to one correlation between inputs and final products. It is argued on the second count that there is no definition in the trade between tape recorder and cassette player, therefore credit was correctly taken, tape recorders had been declared.

4. Shri Bhagat argued for the department and relied upon the findings of the Collector (Appeals).

5. Goods described as two-in-one are in fact combination of tape recorders and wireless receiving set (radio). I agree that the two-in-one is a distinct commodity separately identifiable either from the radio or the cassette recorder. Therefore, credit taken on inputs for either tape recorder or radio could not be utilised towards payment of duty on the two-in-one. Having said, however, I would like to emphasise that since the two-in-one is a combination of both the other instruments, it is likely that there could be a number of inputs common to the two-in-one and either the radio or the tape recorder. In that case provided that the requirement regarding declaration etc. have been met with there would be no objection to credit taken on such common inputs used for payment of duty towards two-in-ones. The appellant has filed a copy of two declarations under Rule 57G(1) for two-in-one and radio as final product, and the other for tape recorder. The inputs for each of these products to be identical. However, in the absence of particulars on the declaration it is not possible for me to conclude whether these were the declarations on the basis of which the credit was taken, If that is so, there should be no objection to the credit being taken on any of the 20 inputs common to all three common final products being utilised towards payment of duty on the two-in-ones.

Since this matter cannot be decided without actual verification, there is no alternative but to remand to the Asstt. Collector for the decision after verifying the position.

6. The other issue relates to credit taken on cassette player, which was not declared. The appellant does not deny that cassettes player does not specifically declared. I am however not able to agree with the appellant that tape recorder and cassette player are indistinguishable in trade parlance. Tape recorder is an apparatus for recording sound whereas cassette player is one for reproducing sound. The two are classifiable under different headings of the Tariff, 85.20 and 85.19.

The appellant does not claim that the cassette player is manufactured by it is a tape recorder, used for recording.

7. In these circumstances I confirm the findings of the lower authorities that since the cassette player was not declared as final product, credit was incorrectly utilised. Except to the extent that the appeal is allowed by way of remand as indicated above, it is rejected.

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