Webel Telecommunication Vs. C.C.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-04-1995

Reported in : (1996)(84)ELT426TriDel

Appellant : Webel Telecommunication

Respondent : C.C.

Judgement :

1. Both these appeals arise from the common order passed by the Collector (Appeals), Calcutta. The appellants are engaged in manufacturing sophisticated vital Walkie-Talkie Sets against Industrial Licence for the use of Indian Air Force, Para-military Forces, State Police Organisations and various Government Companies and Govt.

Departments. They imported Nickel Cadmium Cells, which were assessed to duty at 100% + 40% + 25% C.V. Duty + 5% special duty on C.V. Duty. The appellant filed a refund claim against the levy of Customs Duty and C.V. Duty on the ground that the imported items are to be assessed under Central Excise Tariff Heading 31(2) to be read with Notification No. 45/84-C.E., dated 1-3-1984 and hence C.V. Duty should be charged @15% + 5% special on C.V. Duty. As regards the levy of Customs Duty, the importer had claimed that Nickel Cadmium. Cells are being used in that product i.e. Radio Telephone Set and, therefore, these are to be treated as a part of Radio Telephone Sets to be assessed under Heading 85.15(1) to be read with Customs Notification No. 172-Cus/77 at 60% + 40% customs duty. The Asstt. Collector rejected their claim as unsubstantiated. The Collector

(Appeals) also rejected the appeal on the ground that the item refers as Nickel Cadmium Cells and from the literature it is cleared that there is no reference anywhere that the same is a component of Radio Telephone Set.

2. When the case was taken up for hearing, the appellant was not present. They have sent a letter seeking the case to be decided on the basis of earlier orders passed by the Tribunal in their own case by Order No. 142 to 150/86-B2, dated 6-3-1986 [reported in 1996 (83) E.L.T. 646 (Tribunal) and Final Order No. C/2/95-B2, dated 6-12-1994.

[reported in 1995 (76) E.L.T. 163 (Tribunal) 4. We have carefully considered the submissions and have perused the orders. In Order No. 142 to 150/86-B2, the Tribunal has taken a view that Nickel Cadmium Cells are re-chargeable storage batteries, and not dry batteries. Hence, the exemption under Notification No. 94/76-C.E., dated 16-3-1976 is not applicable to the said item. The Tribunal also confirmed the classification under Heading 85.04 of the Customs Tariff.

But at the same time, the Tribunal has held that the cells being storage batteries, their assessment should have been under sub-item (2) of Item 31 of the Central Excise Tariff which attracted the lower rate of 20% - the same rate which the appellants had claimed in terms of the exemption notification. Therefore, the appeals were allowed with the direction that countervailing duty be re-assessed under Item 31(2) CET and consequential refund be given to the appellants. This ratio was followed in the appellant's own case in Order No. C/2/95-B2, dated 6-12-1994. In the light of the order, the Tribunal has also ordered for classification for the purpose of assessment under Heading 85.04 for CVD under 31(2) and the directions were given to the Revenue authorities to give consequential relief and thus the appeal had been partly allowed.

5. We take note of the above orders and taking into consideration of the same and applying the ratio thereof, we hold that the assessment for classification under the Customs Act is required to be confirmed under Heading 85.04 and for CVD purpose under Heading 31(2) of Central Excise Tariff Act and that the appellants are entitled for consequential relief to the extent ordered in earlier cases. The appeals are disposed of in the above terms.