

Continental Device (i) Ltd. Vs. Collector of Central Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-25-1995

Reported in : (1996)(83)ELT120TriDel

Appellant : Continental Device (i) Ltd.

Respondent : Collector of Central Ex.

Judgement :

1. The issue for decision in this appeal is whether the goods described as "graphite jigs" fall within the exclusion clause in the Explanation to Rule 57A of the Central Excise Rules. The authorities below found they were in the nature of equipment or apparatus and had disallowed the modvat credit on the duty paid by them.

3. Shri G. Shiv Dass, advocate explained in detail the function of the graphite jigs. He showed their application by means of photographs and also produced the samples of them. The graphite jigs are used in pairs. Each of these is rectangular in shape with holes for help, to fasten them. It has a number of rows of holes of narrow diameter. The function of this jig is to fuse the leads to the capsule containing silicon chip in order to make a diode. Each of the leads is inserted through a hole in one of the plates, with the capsule being held in place between two plates. Subsequently electricity is passed through heating element attached to either side of the plates. It was stated that the plates convey the heat so generated as also the heat resulting from electricity passing through it and to the assembly which is in position. The heat fuses the leads to the capsule, forming the complete

diode.

4. I do not find much merit in the advocate's argument that because plates have been classified under Chapter 38, they could not be considered to be in the nature of any machinery or appliances. Heading 38.01 is for graphite and some manufactures of graphite. The item in question is fully finished item and does not require any further manufacturing or processing as admitted by the advocate before it is taken into use. Without going into the correction of the classification which prima facie seems questionable, I have to hold in any case that classification does not determine the nature of the inputs as machinery or not. At the most, classification is one of the factors to be considered. Much emphasis was laid by the advocate on the judgment of the Calcutta High Court in the case of Singh Alloys & Steel Ltd. v. Asstt. Collector of Central Excise - 1993 (66) E.L.T. 594 to say the item does not fall within the definition of appliances or equipment as defined in the McGraw Hill Dictionary of Scientific and Technical Terms. Even going by definition in the dictionary, the goods would merit consideration as appliance as one of its functions is to convert the electrical energy into the heat required for the fusion (I am of course going by the description and function of the item as explained by the advocate). A jig is defined in the same dictionary as "a device used to position and hold the apparatus from the machinery operation and to guide the cutting tool." A jig in fact figures in the description of 'tool' in the dictionary. The item therefore would, in my view, properly be considered appliance or tool.

5. There is nothing to show that the explanation given by the department of Electronics was at the request of the Assistant Collector, as is claimed. The opinion of that Department which specialises electronics, as to the meaning of terms used in engineering technology cannot be considered to be expert opinion. In any event it is seen to be factually incorrect. According to the advocate, the jigs plates can be used up to ten times before they become unusable due to holes which hold the leads becoming corroded and irregular due to heat.

I am not able to agree that the item cannot be considered machinery because it can only be used a certain number of times. Every item of machinery or

appliances has a finite life, which varies from item to item. It is not the length of life alone which determines whether the item is a machine or appliance or not.

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