T.V.S. Electronics Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-12-1996

Reported in : (1996)(84)ELT340TriDel

Appellant : T.V.S. Electronics Ltd.

Respondent : Collector of Central Excise

Judgement :
1. M/s. T.V.S. Electronics Ltd., Tumkur (hereinafter referred to as 'TVS'), have filed the present appeal being aggrieved with order dated 21-9-1992 of the Collector of Central Excise, Bangalore.

2. The matter relates to the classification of the products Modem, Cartridge Tape Drive (CTD) and Passive Hubs, used with the Data Processing Machines. Data Modem and Fax Modem were classified by the TVS under Heading No. 84.71 of the Schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as the 'Tariff'), and were classified by the Revenue under Heading No. 85.17 of the Tariff. CTD were classified by TVS under Heading No. 84.71 of the Tariff and were classified by the Revenue under Heading No. 84.73 of the Tariff.

Passive Hubs were classified by TVS under Heading No. 84.71 and were classified by the Revenue under Heading No. 84.73 of the Tariff. In the show cause notice dated 26-3-1992 issued by the Collector of Central Excise, Bangalore, the extended period of limitation was invoked. The Collector of Central Excise, Bangalore in his Order dated 21-9-1992 ordered classification of Modems under Heading No. 85.17 and CTD under Heading No. 84.73 and confirmed the demand of differential duty relating thereto. The demand with regard to Passive Hubs was however, vacated as time barred. The Id. Collector, Central Excise observed that it was open to the Asstt. Collector to determine the correct classification of the Passive Hubs in accordance with Law. A penalty of Rs. 3 lakh was imposed on TVS.3. The matter was posted for hearing on 17-10-1995 when Shri Krishna Srinivasan, Advocate with Shri P.K. Ram, Advocate appeared for the appellants. Shri K.K. Jha, SDR represented the respondents.

4. Shri K. Srinivasan, Id. Advocate stated that the show cause notice is dated 26-3-1992 while the duty had been demanded for the period 1-9-1988 to 28-2-1990. He referred to the earlier show cause notices on the same issue and submitted that the entire material had been furnished by them to the Deptt. and that there was no ground for alleging suppression against them. On merits, the ld. Advocate stated that no independent inquiry had been made by the adjudicating authority and that the reliance on Expert's opinion was not correct. The testimony of Shri Hemant Kumar was not reliable. The end use was not relevant for classification. There was no mens rea and therefore, penalty was not imposable.

5. In reply Shri K.K. Jha, Ld. SDR submitted that as per HSN Explanatory Notes, Fax Modem and Data Modem were excluded from the Heading No. 84.71. CTD were also excluded as per Chapter Note 5 of Chapter 84 from Heading No. 84.71. They performed specific functions and is in the nature of parallel back-up facility. On limitation, the ld. SDR referred to the show cause notice and the Order-in-Original and submitted that the appellants had misrepresented. In support of his arguments, the ld. SDR relied upon the Hon'ble Supreme Court's decision in the case of CCE v. Fuse Base Eltoto Ltd. 1993 (67) E.L.T. 30 (SC).

6. We have carefully considered the matter and have given our due thought and consideration to the submissions made by both the sides.

7. First, we would take up the matter of classification of the three products under consideration.

8. In their supplementary classification list No. 4/89, TVS had declared Data Modem and Fax Modem as units of Automatic Data Processing Machines and units, thereof, classifiable under Heading No. 84.71 of the Tariff. A Modem is a device that allows computer users to communicate with one another over telephone lines. It takes the digital information from the computer and modulate it into audio signals that can be sent over telephone lines. Using the modem we can send information to another computer by calling its modem on the phone. The matching compatible modems communicate through the communication software which controls the connection between the two identified computers. Communications software calls the other computer; that computer's modem answers the phone, talks to the modem of the calling computer and then the two computers start sending information back and forth to each other. There are two kinds of modem; internal and external. The internal modem is plugged inside the expansion slot. The external modem is outside the computer and is connected to the serial port (other than printer port), via a modem cable. An internal modem is useful only on a personal computer (PC), it can plug into. The modems modulate and demodulate the information transmitted through telephone lines into transmittable digitable form. The appellants had explained their product in Annexure-I & II Supplementary Classification List No.4/89 at page 73 of the Paper Book No. II as under:- "Computers process data which are in the digital binary format. This data cannot be sent to another computer located in a different location through telephone lines. The signal is modulated and transmitted in the analog form, which is accepted by telephone lines. The signal received is demodulated and given to the computer in the digital format, which it understands. Data Modem is the short form of Modulator and Demodulator." Fax Modem was described at page 74 of the paper book as an alternative to conventional telex communication. Through Fax modem documents, letters, drawings, pictures or any other image could be sent over telephone lines to fax machines.

9. TVS had sought classification of their product Data Modem and Fax Modem, CTD, and Passive Hubs under Heading No. 84.71 of the Tariff Heading No. 84.71 covered the following :- "Automatic Data Processing Machines and units thereof : magnetic or optical readers, machines for transcribing data on two data media in coded form and machines for processing such data, not elsewhere specified or

included."Collector of Central Excise v. Wood Craft Products Ltd. 1995 (77) E.L.T. 23 (S.C.), the Hon'ble Supreme Court had held in para 12 of their judgment that "for resolving any dispute relating to Tariff Classification a safe guide is the internationally accepted nomenclature emerging from the HSN. This being the expressly acknowledged basis of the structure of Central Excise Tariff in the Act and the Tariff Classification made therein, in case of any doubt, the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act." 11. Heading No. 84,71 of the HSN covers the same description as in Heading No. 84.71 of the Tariff as given above. In the HSN, Heading relating to Automatic Data Processing Machine and units thereof, excludes machines, instruments or apparatus incorporating or working in conjunction with an Automatic Data Processing Machine and performing a specific function. Such machines, instruments and apparatus are classified in the Headings, appropriate to their respective functions failing that in residual headings. It has been specifically mentioned at page 1301 of vol. 3 of the HSN Explanatory Notes under Heading No.84.71 that "Modulator and Demodulator, apparatus (Modems) which modulate in transmittable form over a Telephone Network Information obtained from an Automatic Data Processing Machine and re-convert it into digital form", are excluded from Heading No. 84.71 and they are classifiable under Heading No. 85.17 which covers "electrical apparatus for line telephony or line telephony including such apparatus for carrier current line system." It is explained at page 1363 of Vol. IV of the Explanatory Notes that apparatus of the group of 'special apparatus for carrier-current line systems' "consists in the transmitting section of oscillators, modulator, etc., and in the receiving station, of filters, demodulators, etc. This group includes combined modulators - demodulators (Modems)." 12. We have carefully gone through the analysis made by the ld.Collector of Central Excise, Bangalore with regard to the Modems and we agree with him that the Modems merited classification under Heading No.85.17 of the Tarrif.

13. TVS had sought classification of their product CTD under Heading No. 84.71 of the Tarrif. Heading No. 84.71 of the Tarrif had been extracted above. The Heading No. 84.71 as appearing in the HSN had also been discussed above. It has been explained at page 1299 of Vol. III of the HSN Explanatory Notes that Heading No. 84.71 also covers separately presented constituent units of data

processing systems. The constituent units are those defined under digital machines and analogue machines, as being parts of a complete system. Examples of such units apart from central processing units and input and output units included additional storage external to the central processing unit (Magnetic tape transports, magnetic card transports, magnetic disc and drum storages, magnetic core storage etc.).

14. The CTD is a back-up system for use with compatible machines. It is a separately housed unit, a sort of removeable secondary medium on which the information otherwise stored on the Winchester drive could be backed-up. Backing-up is making a safety copy of the Data. It is not an additional storage units. It is packed and despatched separately and had to be configured with PCS and mini computers. The product literature on record provides that it is an accessory suitable for use with the PCS and fits into the space next to the monitor.

15. The Revenue had proposed the classification under Heading No. 84.73 which covered "parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of Heading Nos. 84.69 to 84.72." Heading No. 84.73 specifically covers accessories of the machines of Heading No. 84.71. It has been explained that for the purposes of Heading No. 84.73 the term accessories covers only those articles which are designed to be mounted on the machines; it does not extend to independent accessories or ancillary machines used in conjunction with other office machines. The accessories covered by Heading No. 84.73 are therefore, interchangeable parts or devices designed to be mounted on a machine to adapt it for a particular operation or to perform a particular service relative to the main function of the machine or to increase its range of operations. In the present case, the PCS are configured with CTD.16. The ld. Collector of Central Excise, Bangalore had dealt with the matter in great detail at page 14 to 25 of his Order and had held that they were correctly classifiable under Heading No. 84.73 of the Tarrif.

We have discussed the product as well as the Tarrif Description above and we concur with the views of the ld. Collector of Central Excise, Bangalore that CTD are correctly classifiable under Heading No. 84.73 of the Tarrif.

17. The ld. Collector of Central Excise, Bangalore had left it to the Asstt. Collector to determine the correct classification of Passive Hubs. As he had not discussed the classification of the Passive Hubs and had not recorded any finding in this regard, we are not dealing with that product.

18. On limitation, the Ld. Collector Collector Sic. of Central Excise had observed that the goods were not correctly described, there was wilful misstatement and that the relevant facts had been suppressed.

All the relevant information had not been furnished and he had held that with regard to the products - Modems and CTD the extended period of limitation had been rightly invoked. The appellants had contended that it is a matter involving classification dispute and that there was no suppression and that they rightly considered that all their products were classifiable under Heading No. 84.71 of the Tarrif. They have also referred to the earlier show cause notices issued on 26-10-1990, 27-2-1991, 26-8-1991 and 29-1-1992 wherein the duty had been demanded for the period from 1-3-1990 to 31-12-1991. The last show cause notice was issued by the Asstt. Collector on 29-1-1992 while in the present case the show cause notice had been issued on 26-3-1992 for the earlier period not covered by these four show cause notices. They have contended that as the above show cause notices had been issued invoking only the normal period of limitation how it could be said that there was any suppression on their part.

19. We have recorded our findings on classification above. With regard to limitation, we have given our anxious thought to the developments in this case. The ld. Collector of Central Excise had himself recorded that the matter was technical in nature. The jurisdictional Central Excise Officers had approved the classification lists without any change. The assessments were not provisional. On going through the correspondence exchanged between the Deptt. and appellants, we do not find that there had been any positive suppression. The Assessing Officer had approved the classification and had not raised any objection to the clearances made under the approved classification lists. For the subsequent period from 1-3-1990, the show cause notices were issued invoking the normal period of limitation.

20. With regard to the product - Passive Hubs, the ld. Collector of Central Excise had vacated the demand as the same was hit by limitation of time as no mis-declaration on the part of TVS was established. In the circumstances, we are not convinced that it was a case where the extended period of limitation could be rightly invoked.

21. Thus, on the question of classification, we agree with the ld.Collector of Central Excise. On the question of limitation, we consider that the demand could only be sustained for the normal period of limitation in the facts of this case. In the circumstances, there is no ground for imposition of penalty.