Modi Enterprises Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-11-1996

Reported in : (1996)(87)ELT256TriDel

Appellant : Modi Enterprises

Respondent : Collector of Customs

Judgement :

1. The issue for determination in this appeal which has been preferred.

against the order of the Collector of Customs (Appeals), Bombay is the eligibility of Nickel-cadmium batteries imported by the appellants herein for the benefit of exemption from payment of Excise duty in terms of Notification No. 16/55, dated 18-4-1955 which grants exemption to Electric batteries of the type known commercially as 'Stationary batteries'.

2. We have heard Shri K. Kumar, learned Counsel appearing alongwith Shri N.C. Sogani, learned Consultant and Shri Mohd. Ali, learned DR and carefully considered their submissions.

3. The appellants contend that the goods under reference are permanently soldered on printed Circuit Board fitted in emergency lights and are hence stationary batteries in terms of the ISI definition in IS : 1885 (Part 8) 1986 which defines a stationary battery as "storage battery designed for service in the fixed location". They submit that, since the Nickel-cadmium battery is clearly defined as

a secondary battery in the IS specification and these batteries are fixed permanently on the PCB, they are recognised as stationary batteries and hence are entitled to the benefit of exemption from duty under Notification No. 16/55.

4. The case of the department is that since the imported cells are fitted into emergency lights which are portable, they cannot be considered as stationary batteries which by nature are heavy and generally used in power houses or power-generating plants for electricity storage and further the imported cells are ordinarily used in transformers, radios and cameras as well as in emergency lights.

5. We note that the IS 1885-1986 defines a secondary cell or battery as an electrochemical system capable of storing electrical energy by conversion into chemical energy and which can give it back again by reconversion and these conversions take place due to the passage of current in one direction or the other. (Clause 2.1 of General Definitions). Clause 2.7 defines Nickel-cadmium (Secondary) Battery as an alkaline secondary battery in which the positive material is made mainly from nickel and the negative material is made mainly from cadmium. While there is no dispute that the nickel-cadmium batteries are secondary batteries what is relevant for the purpose of determining the eligibility of the goods imported to the benefit of the notification is whether they are stationary batteries i.e. whether they are designed for service in the fixed location. Fitting in a fixed location namely, fitting on the printed circuit board by soldering does not answer the question as to whether the secondary battery is a secondary battery. The expression designed for service in the fixed location' lends itself to the meaning suggested by the learned DR viz.

that the battery should be designed for being used in a fixed spot.

6. Applying this interpretation, the imported batteries do not qualify to be considered as stationary batteries as they are designed for service in an emergency light which can be moved from place to place.

The literature of the supplier Hitachi does not help in deciding the moot issue in this case it only shows that the Nickel-cadmium battery is a storage battery which can be repeatedly charged and discharged in excess of 1000 times; that it is used for emergency lighting and fire alarms and as power sources for cameras, radios, search lights etc. The Tariff Advice No. 24/74 relied upon by the learned Counsel for the appellants is also not conclusive because it only states that the question whether Nickel-cadmium battery should be treated as stationary battery is to be decided by taking into account the definition in the ISI and the facts of each individual case.

7. The certificate dated 24-4-1986 issued by the Assistant Prof., Department of Electronics and Commercial Engg., Jodhpur University cannot be relied upon as it is a document which has been obtained by the appellants after importation. The appellants having thus failed to establish that the batteries imported by them are known commercially as stationary batteries, we hold that the benefit of Notification No.16/55 has rightly been denied to them. The impugned order is accordingly confirmed and the appeal rejected.