Crompton Greaves Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-06-1996

Reported in : (1996)(87)ELT414TriDel

Appellant : Crompton Greaves Ltd.

Respondent : C.C.E.

Judgement :
1. This Appeal is directed against the Order-in-Appeal A-141 /94, dated 13-4-1994 of Collector of Central Excise (Appeals).

1.2. The appellants are engaged inter alia in the manufacture of circuit breakers of the following types.

The Appellants claimed the classification of these circuit breakers under subheading [8535.00] of the Schedule to the Central Excise Tariff Act, [1985], and claimed also exemption under Notification No.52/93-C.E., dated 28th Feb. 1993. Vide order 11th June 1993 the Assistant Collector held Bulk Oil Circuit Breakers were classifiable under sub-heading 85.37 of C.E.T. Act. He however held the porcelain clad vaccum circuit Breakers and EHV SF6 Gas Circuit Breakers were classifiable under sub-heading [8533.00]. The Respondent filed application under Section 35E(iv) of Central Excises and Salt Act, 1944 against the order dated 11th June, 1993 of Assistant Collector claiming Porcelain Clad Vacuum Circuit Breakers and EHV SF 6 Gas circuit Breakers were classifiable under sub-heading [8537.00] of C.E.T. Act as held by the Assistant Collector.

1.3. The Appellants preferred an appeal before the Collector of Central Excise (Appeals) who allowed the appeal filed by the Assistant Collector and rejected the appeal filed by the appellants and held that all the circuit breakers are classifiable under Heading 85.37 of Central Excise Tariff Act. Hence this appeal.

2. Arguing on behalf of the appellants the ld. Sr. Counsel submitted that all the circuit breakers manufactured by them are correctly classifiable under sub-heading 8535.000 of Central Excise Tariff Act, [1985] as the primary function of these is switching off or protecting electrical circuit. The emphasis in sub-heading [8537.00] is on control or distribution of electricity and the circuits manufactured by them are not used for these functions. Citing the case of Atul Glass Industries Ltd. And Ors. v. C.C.E. reported in - 1986 (25) E.L.T. 473 (SC) the ld. Sr. Advocate submitted that goods are to be classified on the basis of the primary functions for which the goods are known bought and sold in the market and in this context the circuit breakers would merit classification under Heading [8535.00] of C.E.T. Act. Chartered Engineer had confirmed that the primary function of these circuit breakers is to switch off or protect the electric circuit and not to control or distribute electricity. He cited the decision of the Tribunal in case of Havel's Industries v. C.C.E. - 1993 (68) E.L.T. 353 (Tribunal) where it was held that one cabinet containing two switches was classifiable under Heading [8535.00] of C.E.T. Act and not sub-heading [8537.00]. Legislature has consciously used two different expressions, namely, "switching off or Protecting" of electrical circuit breakers, and "control or distribution of electricity" under two different headings. The primary function of the electrical circuits produced by them was not the control or distribution of electricity.

Heading 85.35 refers to a specific function of protecting electrical circuits and therefore this heading should prevail over Heading 85.37 containing the general description of control of electricity. The function of their circuit breakers is not to control or distribute the electricity but these are used for switching off or protecting electrical circuits. The fact that these contained two or more apparatus like Switches, fuses, relays etc. is not germane for determining the classification. Chapter 85.37 does not merely incorporate the condition of goods containing two or more apparatus but it has further requirement that goods must be used for "control or distribution of electricity". The expression "Control or distribution of electricity" would mean regulation, checking and spreading of flow of electricity which is a function distinct from switching off or protecting the electrical circuit breakers from overloading or underloading of power. These circuits switch off or protect the circuit during overloading or short circuits and thereby prevent damage to the main machine to which these are connected. HSN notes on which reliance has been placed by Collector do not describe goods of Heading 85.37 with reference to their function and these cannot be applied in the given circumstances for determining the classification.

2.2. In any case, Porcelain Clad Vacuum Circuit Breakers and EHV SP 6 Gas circuit Breakers are not a single unit. A separate control panel is installed at the site for connecting these two circuit breakers. In the absence of control panel these two circuit panels are not classifiable under Heading [8537.00] as originally held by the Assistant Collector.

3. Arguing for the Revenue, the ld. D.R. submitted that in case of Harvel's Industries (supra) Only switches were involved and therefore Tribunal had rightly held that there should be two apparatus. End use is not relevant and in this case he cited the case reported-in 1988 (14) ECR (SC) and the case of Dunlop India Ltd. v. C.C.E., - ECR Compilation 476 (SC). HSN Note at page 1388 specifically exclude assemblies (other than simple switch assemblies) of the apparatus mentioned under Heading 85.37 and include these under 85.37. In view of this specific exclusion of assemblies the impugned goods can be classified under heading 85.37. In the rejoinder the ld. Sr. Counsel submitted that reference to automatic circuit breakers and therefore excluded clause would not apply. Even in Heading 85.35 there is an assembly of equipment to carry out primary function. He submitted that the goods are for switching off or protecting electrical circuits and not for control or distribution of electricity.

4. We have heard both sides. For the sake of clarity we are extracting below the two competing tariff entries 85.35 and 85.37."85.35 8535.00 Electrical apparatus for switching or protecting electrical circuits, or for making connections85.37 8537.00 Boards, Panels (including numerical control panels), consoles, desks,

cabinets and other Heading 85.35 refers to electrical apparatus for switching off or protecting electrical circuits. Heading 85,37 refers to Boards, Panels (including numerical control panels), consoles, desks, cabinets, and other bases equipped with two or more apparatus of Heading No. 85.35 or 85.36 for electric control or the distribution of the electricity.

5. The show cause notice alleges that Bulk Oil Circuit Breaker is a panel equipped mainly with Bulk Oil Circuit Breaker and equipped also with fuse, over-current relays, Earth Fault Relays, instantaneous Earth Fault Relay, Amperemeter, Voltameter and Kilovolt hour meter.

5.2. Vacuum Circuit Breaker, it is alleged, is also a panel equipped mainly with vacuum circuit Breaker and also equipped with fuses, over-current relay, earth fault relay, instantaneous earth fault relay, Amperemeter, Voltameter and Kilovolt hour meter.

5.3. These facts were not disputed before us. In fact, in the memorandum of appeal, the appellants while admitting that the goods contained two or more apparatus like switches, fuses, relays, meters etc. stated that these are extraneous and non-germane for determining the classification. The ld. Sr. Counsel forcefully argued that the primary function of the circuit breaker is to switch and protect the circuit breaker during overloading or short circuit thereby preventing damage to the main machine to which the same is connected. Reliance was placed on Tribunal's judgment in the case of Havel's v. C.C.E. (supra) to plead that the impugned goods would rightly merit classification under Heading 85.35.

5.4. Tribunal held that apparatus containing 2 switches in cabinet cannot be considered two or more of such apparatus to attract classification under Heading 85.37. In fact HSN notes also exclude under Heading 85.35 only assemblies other than simple switch assemblies.

5.5 It is not the case of the appellants that the equipment under consideration consists merely of two switches. The impugned goods are panels equipped with Bulk Oil Circuit Breakers or Vacuum Circuit Breakers and equipped also with other apparatus falling either under Item 85.35 or 85.36. While Bulk Oil Circuit Breaker or Vacuum Circuit Breaker falls under Heading 8535.00, fuses attract classification under 85.36, over current relays under 85.36, earth fault relay again under 85.36, instantaneous earth fault relay under 86.36, Amperemeter under Chapter 90, Voltameter under Chapter 90, etc. In other words, the impugned goods are panels equipped with two or more apparatus of Heading 85.35 or Heading 85.36. HSN notes 85.37 clarify that goods under this heading consist of assembly apparatus of the kind referred to in Heading 85.35 and 85.36 (e.g. Switches and fuses) on a Board, Panel, console etc. or mounted in a cabinet, desk, etc. They usually also incorporate meters and 15/872 sometimes also, subsidiary apparatus such as transformers, relays, voltage regulators etc. It is difficult to see how the impugned goods which admittedly are panels, equipped with circuit breaker classifiable under tariff Heading 8535.00" and equipped with also fuses, over current relays, earth fault relays, etc.

classifiable under Heading 85.35 or 85.36, would not [attract] 85.37.

The language of the Tariff Heading 85.37 is unambiguous. It covers the panels equipped with two or more apparatus of Heading 85.35 or 85.36 and the impvigned goods should be such goods as are meant for electric control and distribution of electricity. The function of circuit breakers he maintained was not to control or distribute electricity but to switch on or protect the circuit. The first question is whether the impugned goods are panels, consoles, etc. which are equipped with two or more apparatus under Heading 85.35 or 85.36 including those incorporating instruments or apparatus of Chapter 90. Admittedly Bulk Oil Circuit Breaker and Vacuum Circuit Breaker is a panel equipped with the circuit breakers classifiable under Heading 85.35 and is also equipped with goods classifiable under Heading 85.36. Over current relays classifiable under 85.36 Earth Fault Relay, Classifiable under 85.36, and Ampermeter classifiable under Chapter 90 etc. The condition of goods being a panel and equipped with one or more apparatus of Heading 85.35 or 85.36 or Chapter 90 is satisfied. The case of Havel's Industries v. C.C.E. (supra) does not help the appellants.

Interestingly that was the case where appellants sought classification of switches under 85.37 on the ground that it is in the form of steel cabinet and is equipped with two sets of switches of Heading 85.36 mounted on a panel. It was also contended that the expression two or more apparatus under Heading 85.35, 85.36 in Heading 85.37, cannot be interpreted to read as two or more different apparatus of Heading 85.35 or 85.36. Tribunal, however, held that apparatus containing two switches in a cabinet cannot be considered two or more such apparatus to attract classification under Heading 85.37 and therefore held that goods are classifiable under Heading 85.36. The appellants also at an earlier stage appear to have sought classification of these very good under 85.37. The plea of changed classification now however cannot be held against the appellants for there can be no estoppel against law.

Panels in case of the appellants are not merely equipped with two switches. Unlike the case of Havel's Industries (supra) as indicated earlier, the panels are equipped with fuses, Ampermeter, Voltameter, instantaneous earth fault relays, fuses, or current relays, etc. The condition of panel being equipped with two or more apparatus of Heading 85.35 or 85.36 therefore is fully satisfied.

5.6. Expression "for electric control or distribution of electricity" under Tariff Heading 85.37 is broad enough to cover functions such as are set out under Headings 85.35 and 85.36. The combination in this panel of items falling under Heading 85.36 and 85.36 basically serves the function of electric control or distribution of electricity.

6. In regard to porcelain clad vacuum circuit breakers, or EHV SF 6 Gas Circuit Breakers, it was contended that in any case the panel is fixed at places than the other apparatus and therefore these should be classified in 85.35 as held by the Assistant Commissioner. It was however, stated that even while on different places these are interconnected. So long as panels and other apparatus are connected with each other the goods have to be treated as panels equipped with two or more apparatus under Heading 85.35 or 85.36. The expression used in Tariff Item No. 85.37 is "equipped with" and so long as the panel is connected to the two apparatus it can be considered to be equipped with those apparatus. A

split Air-conditioner does not cease to be a single unit because two parts are placed at a distance from each other.

7. In the result, for the reasons mentioned hereinbefore we reject the appeal and uphold the impugned order.