

SUPREME COURT OF INDIA

Messrs Continental Profiles Limited

Vs

Commissioner of Central Excise, New Delhi

Appeal (Civil) 4904-4905 of 2002

(Arijit Pasayat and L. S. Panta, JJ)

21.05.2007

JUDGMENT

DR. ARIJIT PASAYAT, J.

1. Challenge in these appeals is to the order passed by Customs Excise and Gold (Control) Appellate Tribunal, New Delhi (in short the 'CEGAT'). By a common order CEGAT dismissed the two appeals filed by the appellant. The issue involved in the appeals was whether "Actuators" were classifiable under sub-heading 85.43 as claimed by the appellant or under heading 85.01 of the schedule to the Central Excise Tariff Act, 1985 (in short the 'Tariff Act') as contended by the revenue. The demand made was confirmed by the Commissioner (Appeals). The stand of the appellant before the CEGAT was that in CCE v. Guindy Machines Pvt. Ltd. Â 1999 Indlaw CEGAT 4556 and in the case of Audco India Ltd. v. Commissioner of Customs Â 1997 Indlaw CEGAT 301 it has held that "Actuators" are not classifiable under heading 85.01. Commissioner (Appeal) relied on the decision in CCE, Bombay v. Seimens (I) Ltd. Â 1999 Indlaw CEGAT 3966 where it was held that the "Actuators" were classifiable under Heading 85.01. thus there were conflicting decisions in the matter.

2. Learned counsel for the Revenue submitted that Guindy's case (supra) was distinguished by the Tribunal in Seimens' case (supra) by observing that the product involved in the said case was "Electromechanical Actuator" which was considered as a part and accessory suitable for use solely or principally with the machine of heading Nos. 84.56 to 84.65. In that view of the matter there is

no necessity to refer to the matter to the Larger Bench. The Tribunal referred to the decisions and with reference to the factual position held that the view in Seimens' case (supra) was applicable. Factually it was noticed that Electric Valve Actuator falls under heading 85.01 and there is no contrary mention in the Central Excise Tariff. The product is to be classified under Heading 85.01 only. With reference to the write up on Electrical Actuator it was found that these are required to regulate flow. The distinction with Guindy's case (supra) was noticed by observing that the product involved was "Electromechanical Actuator" which was considered as part and accessories suitable for use solely or principally with the machines of Heading Nos. 84.56 to 84.65. Reference was also made to the Explanatory Notes of H.S.N.

3. In support of the appeal, the stands taken before the CEGAT was reiterated. It was submitted that the HSN can be relied on if goods are identical. In these cases goods are not identical.

4. In Section XVI, Chapter 85 GEN, it is noted as follows: (A) SCOPE AND STRUCTURE OF THE CHAPTER This Chapter covers all electrical machinery and equipment, other than;

(a) Machinery and apparatus of a kind covered by Chapter 84, which remains classified there even if electric (see the General Explanatory Note to that Chapter), and (b) Certain goods excluded from the Section as a whole (see the General Explanatory Note to Section XVI).

5. Contrary to the rules in Chapter 84, the goods of this Chapter remain classified here, even if they are of ceramic materials or glass, with the exception of glass envelopes (including bulbs and tubes) of heading 70.11.

6. This Chapter covers: (1) Machines and apparatus for the production, transformation or storage of electricity, e.g., generators, transformers, etc. (85.01 to 85.04) and primary cells (heading 85.06) and accumulators (heading 85.07)

(2) Certain electro-mechanical apparatus, e.g., electromechanical tools for working in the hand (heading 85 08), certain domestic appliances (heading 85 09), and whavers and hair clippers (heading 85 10)

(3) Certain machines and appliances which depend for their operation on the properties or effects of electricity, such as its electro-magnetic effects, heating properties, etc. (headings 85.05, 8511 to 85.18, 85.25 to 85.31 and 85.43)

(4) Instruments and appliances for recording or reproducing sound; video recorders or reproducers; parts and accessories for such instruments and appliances (heading 85.19 to 85.22).

(5) Recording media for sound or similar recording of other phenomena (including video recording media, but excluding photographic or cinematographic films of Chapter 37) (headings 85.23 and

85.24).

(6) Certain electrical goods not generally used independently, but designed to play a particular role as components, in electrical equipment, e.g. capacitors (heading 85.32, switches, fuses, junction boxes, etc. (heading 85.35 or 85.36), lamps (heading 85.39), thermionic, etc., valves and tubes (heading 85.40), transistors and similar semiconductor devices (heading 85.41), electrical carbons (heading 85.45).

(7) Certain articles and materials which are used in electrical apparatus and equipment because of their conducting or insulating properties, such as insulated electric wire and assemblies thereof (heading 85.44) , insulators (heading 85.46) , insulating fittings and metal conduit tubing with an interior insulating lining (heading 85.47).

7. So far as other non-electric goods falling in Heading 84.85 are concerned in Heading 85.01 it is to be noted that the same relates to electric motors and generators excluding generating sets the details of electric motors are indicated to mention as follows:

"Electric motors are machines for transforming electrical energy into mechanical power."

8. This group includes rotary motors and linear motors. It would be relevant to quote para 3 of the group which reads as follows:

"(3) Valve actuators, electrical, consisting of an electric motor with reducing gear and drive shaft and in some cases, with various devices (electric starter, transformer, hand wheel, etc.) to operate the valve plug."

9. In order to be covered by heading 84.43 (a) the same must relate to electric machines and apparatus with individual functions (b) must not be specified or included elsewhere in the Chapter.

10. Above being the position the view of the CEGAT does not suffer from any infirmity to warrant interference.

11. Appeals are dismissed. No costs.