
(2015) 08 SC CK 0019

In the Supreme Court Of India

Case No : Civil Appeal No. 2855 of 2006

Commissioner of Cus., Bangalore

APPELLANT

Vs

Peperly + Fuchs (India) Pvt. Ltd.

RESPONDENT

Date of Decision : 27-08-2015

Acts Referred:

Citation : (2015) 325 ELT 212

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri A.K. Sanghi, Senior Advocate, P.K. Mullick, Atulesh Kumar, Ms. Swarupama Chaturvedi and B. Krishna Prasad, Advocates, for the Appellant; S/Shri V. Lakshmikumaran, M.P. Devanath, Vivek Sharma, Disha Jain, Abhinav Jagnathan, Rachit Jain, Hemant Bajaj, Anandh K., S. Vasudevan and Ms. L Charanaya, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

The respondents herein are the manufacturer of proximity sensors, float switches, digital input switches, etc. The issue is as to whether these products are classifiable under Heading 85.36 or 90.31 of the Indian Customs Tariff. The description of the two headings is as under : -

Heading 85.36

"Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (For example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp holders, junction boxes), for a voltage not exceeding 1,000 volts."

Heading 90.31

"Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors"

2. The assessee had filed the declaration claiming that the product is covered

under Heading 85.36 whereas the Revenue took the position that the product needs to be classified under Heading 90.31. We may describe the goods in short which is taken note of by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "CESTAT") as well while accepting the plea of the respondent.

3. It is mentioned that the function of the proximity sensor is to detect the presence of the metal object and change the output status of sensor which is used in the control sequence of the machine to which it is to be connected. The function is that it gives a signal to the machine so that the machine can be activated or de-activated or a sequence of operations is carried out. The operation that is to be carried out primarily is switch on or switch off the machine. The CESTAT has taken aid of HSN Explanatory Note with regard to "apparatus for switching electrical circuits" and on that basis, came to the conclusion that the product shall be classifiable under Heading 85.36. The said HSN Explanatory Note reads as follows : -

"APPARATUS FOR SWITCHING ELECTRICAL CIRCUITS

These apparatus consist essentially of devices for making or breaking one or more circuits in which they are connected, or for switching from one circuit to another; they may be known as single pole, double pole, triple pole, etc., according to the number of switch circuits incorporated. This group also includes change-over switches and relays.

(A) The switches of this heading include small switches for use in radio apparatus, electrical instruments, etc., switches of a kind used in domestic electrical wiring (e.g., tumbler switches, lever operated switches, rotary switches, pendent switches, push button switches) and switches for industrial application (such as, limit switches, cam switches, micro-switches and proximity switches)."

4. We have heard the learned counsel for the parties in detail.

5. From record, it emerges that the Revenue accepts that the product in question does the function of switching as well. In fact, these are designed to sense and then switch on or switch off the particular machine to which the product is installed. Therefore, we are satisfied that primarily switching device and sensor is only a means to achieve the same. That was explained by the assessee through its Managing Director Mr. Thampy Mathew and Mr. S. Manjunath, the Assistant General Manager. Herein, it was categorically stated (which is not disputed as well) that without switching on and switching off, the product is of no use at all.

6. Therefore, we agree with the findings recorded by the CESTAT. In fact, we may record that it is not even necessary to indicate this exercise in detail having regard to the fact that the Revenue has issued Notification No. 21/2002-Cus., dated 1-3-2002. It is a general Exemption Notification prescribing effective rates of duty for goods of various chapters/headings. Entry 244 thereof relates to the goods specified in List 26 and a uniform duty of 15 per cent is prescribed therein.

Significantly, it includes Chapter 84, 85 as well as Chapter 90. Therefore, whether the product is classified under Chapter 85 or under Chapter 90 would be of no consequence inasmuch as the duty which is to be paid under both the Chapters is the same.

7. We, thus, do not find any merit in this appeal which is, accordingly, dismissed.