(2015) 07 SC CK 0125

In the Supreme Court Of India

Case No : Civil Appeal No. 5484 of 2003

Commissioner of Customs APPELLANT

Vs

Multi Screen Media Pvt. Ltd. RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Citation : (2015) 322 ELT 421

Hon'ble Judges : A.K. Sikri, J;Rohinton Fali Nariman, J

Bench : Division Bench

Advocate : Yashank Adhyaru, Senior Advocate, Nisha Bagchi, Abhinab Mukherjee, Pooja Sharma and B. Krishna Prasad, for the Appellant; Atul Yeshwant Chitale, Sr. Adv., Suchitra Atul Chitale and Chetan Sharma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. The issue involved in the present appeal pertains to the correct classification that is to be given to the goods of the Respondent Assessee herein which are known as ''business satellite receivers''. The two relevant and competent entries in this behalf are 85.25 and 85.28. Whereas the case of the Assessee is that the goods in question are to be classified in Chapter Heading entry 8525.20, the Revenue contends that the appropriate entry would be 8528.10. Both these entries are reproduced below:

2. It is not in dispute that the ''business satellite receivers'' of the Respondent has the transmitting as well as reception functions. It is for this reason that the Assessee''s contention is the goods fall within the description ''transmission apparatus incorporating reception apparatus''. Mr. Adhyaru, learned senior Counsel appearing for the Revenue on the other hand contends that it is the essential character or per-dominant character of the apparatus which needs to be looked into and in the present case the per-dominant character of the satellite receiver is to receive the signals and then transmit. He has taken us through the product manual of the Respondent from which he has tried to demonstrate that

primary function of the goods in question is to receive the signals.

3. We are not in agreement with the aforesaid submission of the learned Counsel for the Revenue. A reading of Entry 85.28, under which the Revenue wants the product to be included, would show that it pertains to only those apparatus which have the function of receiving the signals only and that they are reception apparatus. The moment particular apparatus has transmission function as well that would be excluded from Chapter Heading 85.28. On the other hand Chapter Heading 85.25 deals with transmission apparatus. Here under entry 8525.20 what is clarified that even if the apparatus which are transmitting signals have the additional functions of reception of signals as well, such goods will still be classified 8525.20. We are therefore of the opinion that the Tribunal has rightly classified the goods of the Respondent under 8525.20.

4. The Commissioner, who had taken the contrary view, went by Rule 2(b), that is the classification of combination substance, and on that basis he held that since the goods were classifiable under two or more headings, classification shall be effected as per the said Rule. This itself is incorrect having regard to the fact that entry 85.28 deals only with reception apparatus with no function as transmission apparatus.

5. This appeal is accordingly dismissed.

6. The excess duty paid by the Respondent, if any, shall be refunded in accordance with law.

7. The appeal is dismissed in terms of the signed order.

