(2021) 02 CESTAT CK 0015

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 85270 Of 2020

M/s. Star Dimension India Pvt. Ltd. @Hash Asstt. Commr. Of Customs, Nhava Sheva-II

Date of Decision : 12-02-2021

Acts Referred:
Customs Act, 1962 — Section 54(1), 111(d), 111(m), 112, 112(a), 125, 771

Citation : (2021) 02 CESTAT CK 0015

Hon'ble Judges : S. K. Mohanty, J;Sanjiv Srivastava, Technical Member

Bench : Division Bench

Advocate : Kuldeep Singh Nara, Manoj Kumar

Final Decision : Disposed Of

Judgement

,,

1. This appeal has been filed against order in appeal No S/49/1398/2019-Misc/ JNCH - 10 (Gr.V)/2020(JNCH)/Appeal-II dated 06.01.2020 of the,,

Commissioner of Customs (Appeals) Mumbai II, JNCH, Nhava Sheva. By the impugned order Commissioner (Appeal) has held as follows:",,

â??14. In view of above the Order in Original No 440/2019- 20/AC/NS-V/JNCH dated 30.10.2018 passed by the Asst Commissioner of,,

Customs Group V NS-V JNCH Nhava Sheva is upheld and Appeal No 1398/2019 filed by M/s Star Dimension (I) Pvt Ltd. is rejected being,,

devoid of merit.â??,,

2.1 Appellant had filed Bill of Entry No 4777113 dated 05.09.2019, for the clearance of the goods imported by them namely Winches (stage Lighting",,

Equipment) and LED Balls of different sizes, having declared value of Rs 21,19,307/- and Rs 1,73.398/-. They claimed the classification of winches",,

under Custom Tariff Heading 84253100 and those of LED Ball under 85395000.,, 2.2 On examination of the goods, Docks officer, found that winches are to be specifically used in kinetic lights with sole function as stage lighting",,

equipment. Thus the goods were correctly classifiable under the heading 94054090 attracting Custom Duty of (BCD-20%+SCW-10%+IGST-12%),,

against (BCD-7.5%+SCW-10%+IGST-18%) as claimed by the appellant. Thus the matter was referred by the dock officers to the group for,,

determination of the correct classification and applicable duty.,,

2.3 After consideration of the submissions made by the Appellant, Assistant Commissioner vide his order in original held as follows:",,

â??25. In view of the above, I pass the following order:",,

i) I order for rejection of classification of goods under CTH 84253100 and re-classify the goods under CTH 94054090 with duty structure of,,

(BCD 20% + SWS10% + IGST - 12%).,,

ii) I order for absolute confiscation of the offending goods mentioned al S no. 1 of B/E no. 47771'13 dtd. 05.09.2019 i.e. 110 pcs of Winches,,

valued at Rs.21,19,307/- under Section 111l(d) &111(m) of the Customs Act, 1962. However. I give the importer an option to redeem the",,

goods on payment o! Redemption Fine of Rs.2,00,000/- (Rupees Two Lakhs only) under Section 125 of the Customs Act, 1962 for re-export",,

purpose only,,

iii) I impose a Penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on the importer under Section 112(a) of the Customs Act, 1962",,

iv) I order to release of the goods at S No. 2. 3. & 4 Bill of Entry No. 4777113 dated 05.09.2019 i.e. total 112 pcs of Balls for LED of,,

different size totally valued at Rs.1,73,398/- on payment of appropriate duty",,

26. This order is issued without prejudice to any other action that may be taken in respect of the foods in question and/or against the persons,,

concerned or any other person, if found involved, under the provisions of the Customs Act, 1962 and/or any other law for the time being in",,

force in the republic of India.â??,,

2.4 Aggrieved by the order of Assistant Commissioner, Appellants preferred an appeal before Commissioner (Appeals). The appeal filed by the",,

Appellants was dismissed by the Commissioner (Appeals), by his order in appeal, referred in para 1, supra.",, 2.5 Aggrieved by the impugned order, appellants have filed this appeal before CESTAT. They also filed an application for early hearing of the appeal,",,

which was allowed by the tribunal vide Miscellaneous Order No M/85261/2020 dated 09.11.2020.,,

3.1 We have Shri Kuldeep Singh Nara, Advocate for the Appellant and Shri Manoj Kumar, Assistant Commissioner, Authorized Representative for",,

the revenue.,,

3.2 Arguing for the Appellant, learned Advocate submitted-",,

Ã Appellate authority has himself and Chartered Engineer has clearly certified that the imported items are winches only,,

Ã The order of the Appellate authority has been passed contrary to the General Interpretative Rules to the First schedule of Tariff;,,

Ã Even in trade and common parlance these goods are considered as winches. As per the decision of the Apex Court in the case of Wockhardt Life,,

Sciences Limited [2012 (277) ELT 299 (SC)] and A Nagaraja Bros [(1994) Supp 3 SCC 122], Delhi Cloth and General Mills Co Ltd [(1980) 4",,

SCC 71] has held that common parlance or trade parlance test to be basis for the determination of classification. He relies upon several other,,

decisions of the various authorities expounding the same principle.,,

Ã Since Winch is separate entity which is not covered under heading â??LED driver and MPCBâ? of 94054090, it will get classified under Heading",,

84253100.,,

Ã Even by application of General Notes for Parts to Section XVI these goods will get classified under heading 84253100 only.,,

Ã Further in terms of the law laid down in the following decisions also the imported goods will get classified under the heading 84253100,,

o Simplex Mills Co. Ltd [2005 (181) ELT 0345 (SC)],,

o Belmarks Pvt ltd {2003 (158) ELT 295 (T-Del)],,

o Hitachi Home & Life Solution Ltd [2012 (285) ELT 504 (T-Mum)],,

o Singhla Sales Corporation Pvt Ltd {2002 (141) ELT 806 (T-Del)],,

o M P Dyechen Industries {2002 (139) ELT 656 (T-Del)],,

Ã Burden is on the department to prove that goods get classified in the particular heading,,

o Hindustan Lever Ltd {2015 (323) ELT 209 (SC)],, o HPL Chemical Ltd [2006 (107) ELT 324 (SC)],,

o Hindalco Industries Ltd {2007 (217) ELT 343 (Cal)],,

o Puma Ayurvedic Herbal (P) Ltd {2006 (196) ELT 3 (SC)],,

Ã Winches imported by them are classifiable under 84253100 and hence do not require compulsory registration as per the Electronics and IT Good,,

(Requirements for Compulsory Registration) Order, 2012",,

Ã In case of misclassification goods by the importer, theÃ goods will not become liable for confiscation as has been held in following cases",,

o S Rajiv & Co [2014 (302) ELT 412 (T-Mum)],,

o Komal Trading Company [2014 (301) ELT 506 (T-Mum)],,

o Surbhit Impex Pvt Ltd [2012 (283) ELT 536 (T-Mum)],,

o MT Ltd [2007 (214) ELT 10 (SC)],,

3.3 Arguing for the revenue learned Authorized representative, while reiterating the finds recorded in the order of the lower authorities, submitted as",,

follows:,,

Ã Commissioner (Appeal) has in para 8 of his order, after referring to Kinetic Lighting User Manual, submitted by the appellant has found that the",,

item classified by the appellants as general purpose winches under heading 84253100, are in fact LED Winches, which perform the function of",,

movement of LED Lights in a synchronized manner and hence are more appropriately classifiable under heading 94054090 as light/electrical,,

fittings.,,

Ã Appellant has not disputed the findings of the OA that these Winches LED also regulate the power required for LED balls and supply a constant,,

amount of power to the LED hence incorporating the function of LED driver. As discussed above the LED Winch is a light fixture on which LED,,

ball is hanged and is nothing but a light fixture, incorporating LED Driver which is covered under the Electronics and IT Goods (Requirements for",,

Compulsory Registration) Order, 2012. Importers contention is that the subject goods ie Winches is not a driver or control gear of LED but it is an",,

independent and general item for holding or adjusting LED lights and that only general lightening covers under the scope of Compulsory,,

Registration Order, 2012, without any clarification/guidelines from the BIS authorities is not sufficient to establish from exemption from the",, requirement of registration. The Electronics and IT Good (Requirements for Compulsory Registration) Order, 2012 does not differentiate LED",,

Driver on the basis of its use for industrial purpose. Thus the importers contention that Winch imported by them does not require BIS registration is,,

devoid of merit.,,

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of argument of appeals. In the matter,,

the following questions have been raised for our determination.,,

(i) Correct Classification of the imported good under the heading 84253100 or 94054090?,,

(ii) Whether the goods are required to be compulsorily registered with BIS, in view of the provision of the Electronics and IT Goods (Requirements for",,

Compulsory Registration) Order, 2012?",,

(iii) Goods liable for confiscation and penalty on the importer justified? Correct Classification of the imported good under the heading 84253100 or,,

94054090?,,

4.2 Commissioner appeal has in para 8 of his order referred to the Catalogue of the product and observed as follows:,,

â??8. The appellant along with the appeal has submitted Kinetic Lighting User Manual. From careful perusal of the same, it is evident this",,

LED Winch is the main equipment of the whole Kinetic Lighting System. The other parts/accessories which are used in the Kinetic Lighting,,

System are LED Ball, Power Cable, Signal Cable, Connecting Cable, Safety Cable and Clamp. Further, there is a clear warning in the",,

manual that ""Running without hanging any light-emitting equipment is strictly prohibited"". The equipment has LCD display for menu",,

selection, DMX in & out socket, Power Switch, USB for update, Fuse and Power in & out socket. It clearly shows that this equipment is not a",,

general purpose equipment which is to be used for lifting and handling. It has specific use in t lighting and goods is marketed as ""Kinetic",,

Light System in stage/ event lighting. From Channel Charts at Page 4 to 6 of the user manual, I find that this equipment performs the",,

function of lifting of LED Equipment, Dimmer function of light from dark to bright, Color macro (changing of colour), strobe function (slow",,

to fast and close) etc. The CE in its report mentioned that the machine has an integrated controller/control gear for controlling both the,,

motor used for upward and downward motion of the LED Globe and that these goods are used in a variety of art, interior, stage shows and",,

event for lifting and lighting applications. LED balls are hanged in this equipment for the purpose of its movement in synchronized manner.,,

The equipment also performs function of regulating the power required for LED balls and supplies a constant amount of power to the LED.,,

All these facts altogether show that the imported equipment is multi-functional equipment and lifting of LED Ball is not the main function of,,

this equipment but it is ancillary function of the equipment. Since lighting equipment (LED Ball) is attached with the winch and winch,,

provides the power to lighting equipment (LED Ball), the equipment is nothing but is a light fixture only.â??",,

4.3 After noting the Explanatory Notes to HSN for heading 84.25 in para 9 he records arrives at the classification of the goods in para 10. The para 9,,

and 10 of the impugned order are reproduced below:,,

â??9. The appellant has classified the product under CTH 84253100. Therefore, for the sake of clarity, I find it relevant to reproduce",,

relevant HSN Explanatory Notes to heading 84.25 here under:,,

â??84.25 - Pulley tackle and hoists other than skip hoists; winches and capstans; jacks.,,

- Pulley tackle and hoists other than skip hoists or hoists of a kind used for raising vehicles: ------,,

S No,Description,CE's Remark

1,Winch (Stage Lighting Equipment),"Â· DMX Winch.

Â· Used in stage lighting.

Â· with integrated electronic controller/ control

gear.

v. DMX winches are used in a variety of art, interior, stage shows and events for lifting and Lighting applications. The primary use of our",,

high precision hoists is the synchronized spatial choreography of large arrays of tethered LED lighting elements or other objects.,,

vi. DMX winches are specific in use (Stage Lighting).,,

vii. The Sample winch shown is steel and power wire DMX winch,,

viii. Such winches are not used for general lighting services / general purpose luminaries.â??,,

From the plain reading of the Chartered Engineer Certificate, it is quite evident that the impugned goods are not simply handling or lifting equipments,",,

their primary use is the synchronized spatial choreography of large arrays of tethered lighting elements, and is specific in use for stage lighting. This",,

observation of the Chartered Engineer, will leave no iota of doubt in our minds as to the use of the impugned goods as lighting fixtures and not as",,

simple handling or lifting equipment.,,

4.6 Tribunal has in case of Indian Aluminium Co Ltd Calcutta [1983 (13) ELT 979 (T)] stated the law as under in similar circumstances-,,

â??5.We have carefully considered the matter. There is no dispute between the parties that the blocker is not an integral part of the hot,,

rolling mill but is an auxiliary equipment. There is also no dispute that the blocker performs the composite functions of (1) coiling, and (2)",,

un-loading the coil sheet or strip on to the conveyor. From the three operational reasons given by the appellants themselves, namely, the",,

shorter length of their hot mill table, making further handling and conveyance of the hot rolled long sheet possible and for feeding their cold",,

rolling mill, we have no doubt in our mind that the principal function of the blocker is coiling. The coiling operation cannot be called mere",,

handling. In the context of the appellantsâ?? plant, it is an essential process of manufacture in the course of production of cold rolled",,

sheets and strips from aluminium ingots. We also agree with the Departmentâ??s representative that none of the machines enumerated in,,

Heading 84.22 alter the form or shape of the material; their function is confined to lifting, handling, loading, unloading and conveying.",,

Since we hold that the principal function of the blocker is coiling, that is other than mere handling, it cannot be classified under Heading",,

84.22. â?¦â?¦.â??,,

4.7 In case of R C Projects & Systems Ltd [2005 (183) ELT 319 (T-Bang)] again reiterating the same principles following was held:,,

â??The contention of the appellants is that the item is required to be considered as parts of the machinery and draw reference to three,,

judgments of the Tribunal. On our consideration, we find that in the case of CCE

v. Conveyor Equipments Pvt. Ltd. [2001 (127) E.L.T. 478],",,

the item Conveyor and material Handling equipments was cleared in CKD condition on account of its huge size, therefore the appellants",,

contention that the entire system is to be considered as an individual item as it satisfies the description of sub-heading 8425.00 as Conveyor,,

and material handling equipments was accepted. This citation is clearly distinguishable. So also in the case of CCE v. B.H.P. Engineers,,

[2000 (119) E.L.T. 599 (T)], the goods cleared were parts of shipments of the conveyor for the purposes of convenience of transportation",,

and held the same to be not as parts of Conveyor and hence the Revenue appeal was rejected. This judgment is also distinguishable. In the,,

case of CCE v. Servall Engineering Industries [2004 (168) E.L.T. 125 (Tri-Che.)], the paper making machine was cleared batch-",,

wise/section-wise in CKD/SKD condition, and hence it was held to be classifiable under subheading 8439.10 as complete machinery and not",,

under subheading 8439.90 as parts of such machinery. This is also distinguishable. On perusal of records, we find that the appellants have",,

produced technical write-up : which clearly describes the DC Drive Panel to control speed of the motor and it was housed inside the control,,

panel. This control panel consists of DC drives and relays switchgears and necessary wiring. In view of specific heading under the Chapter,,

Heading 8437 covering every classifying electric control panel. Therefore, the classification adopted by the revenue is in order. The",,

judgments relied by the DR in the case of Intec Corporation v. CCE, Chandigarh [2003 (156) E.L.T. 544 (Tri-Del.)] confirming",,

classification of electric control panels under specific Heading 85.37 applies to the facts of the case. There is a specific heading for electric,,

control panels and in terms of Note 2(a) of Section XVI, the electrical control panels are classifiable under Heading 85.37 Rule (1) of the",,

Rules for the Interpretation of the Schedule also provides that classification shall be determined, according to the terms of heading and any",,

relevant section or Chapter notes. The Tribunal has examined the Interpretative Rules, Section Notes and HSN explanatory notes to classify",,

electric control panels under specific Heading 85.37 of the Tariff. In the case of Intec Corporation this judgment clearly applies to the facts,, of the case. Therefore, the contention of the appellants for classifying the Electric Control panels as parts of machinery is rejected and the",,

impugned order is upheld. There is no merit in this appeal and the same is rejected.â??,,

4.8 In both the decisions referred above tribunal has applied the essential character test to reject the claim of classification as handling or lifting,,

equipments. In the present case, both the authorities below have determined the essential character of the impugned goods as lighting fixture after",,

considering the product catalogue (literature) and the Chartered Engineer Certificate. Appellants have not produced anything before us to disturb the,,

said findings of lower authority, and establish that impugned goods are simple handling/ lifting equipment to merit classification under heading",,

84253100.,,

4.9 Heading 94054090 of reads as under-,,

9405 LAMPS AND LIGHTING FITTINGS INCLUDING SEARCHLIGHTS AND SPOTLIGHTS AND PARTS THEREOF, NOT",,

ELSEWHERE SPECIFIED OR INCLUDED; â?¦.,,

9405 40 - Other electric lamps and lighting fittings :,,

9405 40 10 --- Searchlights and sportlights,,

9405 40 90 --- Other,,

When both authorities have determined the essential character of the impugned goods as Lighting Fixture, then the classification as",,

determined by them under heading 94054090 cannot be faulted with. Whether the goods are required to be compulsorily registered,,

with BIS, in view of the provision of the Electronics and IT Goods (Requirements for Compulsory Registration) Order, 2012",,

4.9 Both Assistant Commissioner and Commissioner (Appeal) have found that the goods have been imported in contravention of the provisions of,,

Electronics and IT Goods (Requirements for Compulsory Registration) Order 2012. Assistant Commissioner has in para 19, of his order recorded as",,

follows:,,

â??19 On perusal of the sample and the catalogue, I find that the subject goods i.e. Winches are actually Winch LED having fast processor",,

1,Amplifiers With Input Power 2000W And Above,IS 616:2010*

2,Automatic Data Processing Machine,IS 13252(Part 1):2010*

3,Electronic Clocks With Mains Power,IS 302-2-26:2014*

4,Electronic Games (Video),IS 616:2010*

5,"Electronic Musical Systems With Input Power 200w And Above",IS 616:2010*

6,Laptop/Notebook/Tablet,IS 13252 (Part 1):2010*

7,Microwave Ovens,IS 302-2-25:2014*

8,"Optical Disc Players With Built In Amplifiers Of Input Power 200w And Above",IS 616:2010*

9,"Plasma/LCD/LED Televisions Of Screen Size 32""; And Above",IS 616:2010*

10,"Printers, Plotters",IS 13252 (Part 1):2010*

11,Scanners,IS 13252 (Part 1):2010*

12,Set Top Box,IS 13252 (Part 1):2010*

13,Telephone Answering Machines,IS 13252 (Part 1):2010*

14,"Visual Display Units, Videos Monitors Of Screen Size 32"" And Above",IS 13252 (Part 1):2010*

15,Wireless Keyboards,IS 13252 (Part 1):2010*

16,Cash Registers,IS 13252 (Part 1):2010*

17,Copying Machines/Duplicators,IS 13252 (Part 1):2010*

18,Passport Reader,IS 13252 (Part 1):2010*

19,Point Of Sale Terminals,IS 13252 (Part 1):2010*

20,"M a il Processing Machines/Postage Machines/Franking Machines",IS 13252 (Part 1):2010*

21,Power Banks For Use In Portable Applications,IS 13252 (Part 1):2010*

22,Smart Card Reader,IS 13252 (Part 1):2010*

23,Mobile Phones,IS 13252 (Part 1):2010*

24,Self-Ballasted Led Lamps For General Lighting Services,IS 16102 (Part 1):2012*

25,Dc Or Ac Supplied Electronic Control gear For Led Modules,"IS 15885 (Part 2/ Sec

13):2012*

26,"Power Adaptors For Audio, Video & Similar Electronic

Apparatus",IS 616:2010*

27,Power Adaptors For It Equipments,IS 13252 (Part 1):2010*

28,Fixed General Purpose Led Luminaries,"IS 10322 (Part 5/Sec

1):2012*

29,Ups/Invertors Of Rating 30,"Sealed Secondary Cells/Batteries Containing Alkaline Or Other

Non-Acid Electrolytes For Use In Portable Applications",IS 16046:2015*

31,Indian Language Support For Mobile Phone Handsets,"Mobile Phone Handsets IS

16333 (Part 3) : 2016*

32,Recessed Led Luminaries,"IS 10322 (Part 5/Section 2)

: 2012

33,LED Luminaries For Road And Street Lighting,"IS 10322 (Part 5/Section 3)

: 2012

34,Led Flood Lights,"IS 10322 (Part 5/Section 5)

: 2013

35,LED Hand Lamps,"IS 10322 (Part 5/Section 6)

: 2013

36,Led Lighting Chains,"IS 10322 (Part 5/Section 7)

: 2013

37,LED Luminaries For Emergency Lighting,"IS 10322 (Part 5/Section 8)

: 2013

38,UPS/Inverters Of Rating 39,Plasma/ LCD/LED Television Of Screen Size Up-To 32,IS 616 : 2010

40,"Visual Display Units, Video Monitors Of Screen Size Upto 32",IS 13252 (Part 1) : 2010

41,CCTV Cameras/CCTV Recorders,IS 13252 (Part 1) : 2010

42,Adapters For Household And Similar Electrical Appliances,IS 302 (Part 1) : 2008

43,"USB Driven BarcodeR eaders, Barcode Scanners, Iris

Scanners, Optical Fingerprint Scanners",IS 13252 (Part 1) : 2010

44,Smart Watches,IS 13252 (Part 1) : 2010

45,"Crystalline Silicon Terrestrial Photovoltaic (PV) Modules (Si

Wafer Based)","IS 14286 : 2010/ IEC 61215

: 2005, IS/IEC 61730 (Part

1) : 2004 & IS/IEC 61730

(Part 2) : 2004

46,"Thin-Film Terrestrial Photovoltaic (PV) Modules (A-SI, CIGS

And CDTE)","IS 16077 : 2013/ IEC 61646

: 2008, IS/IEC 61730 (Part

1) : 2004 & IS/IEC 61730

(Part 2) : 2004

47,Power Invertors For Use In Photovoltaic Power System,IS 16221 (Part 2) : 2015

48,Utility-Interconnected Photovoltaic Inverters,IS 16169 : 2014

49,Storage Battery,IS 16270 : 2014

