(2014) 08 CESTAT CK 0005

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Appeal Nos. 817 Of 2008

? Oswal Traders & Travels Pvt.Ltd. APPELLANT

Vs

CC (I&G), New Delhi RESPONDENT

Date of Decision : 07-08-2014

Acts Referred:

Citation : (2014) 08 CESTAT CK 0005

Hon'ble Judges : D.N. Panda, J;Manmohan Singh, Technical Member

Bench : Division Bench

Advocate : B.B.Sharma

Final Decision : Dismissed

Judgement

1. None present for the appellant nor is there any adjournment application. Notice has been returned back unserved with postal remark that non

availability of addressee. With the assistance of Revenue, matter has been taken up for hearing considering that appeal is of six years old.

2. Short controversy in this appeal is whether IR Transmit & Receiver Unit Systems as well as Burglary Proof Detection Systems imported by the

appellant are classifiable under CTH 85176100 as base station as claimed by appellant or CTH 85437099 or as â??otherâ? under heading

â??Electricals machines and apparatus having individual functions, not specified or included elsewhere in this chapterâ?? as held by Revenue. Revenue

submits that both class of goods are different from each other by their utility. They should be classified according to their character under respective

class. This observation of the Commissioner is in para 7 of his order. With thorough examination in para 6, he has noticed that so far as IR Transmit &

Receiver Unit Systems is concerned, that consists of various equipment.

However, the principal function of the machine is processing of audio signal

to give a special effect. The equipments performing the similar function are classified under the heading 8543. When the goods was complete system

that cannot be treated as part of system to bring that to different tariff entry. The dispute having been confined to the classification of IR Transmit &

Receiver Unit Systems, ld. adjudicating authority confined his decision to that goods only.

3. Heard Revenue and perused the manner of understanding of goods by Commissioner (Appeals) in para 5 & 6 of his appellate order. In para 7 of

his order, he has rightly understood what are the goods covered by heading 8517 claimed by the assessee and that reads as under:-

8517 Telephone sets, including telephones for cellular networks or for other wireless networks: other apparatus for the transmission or reception of

vice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than

transmission or reception apparatus of heading 8443, 8525, 8527 or 8528.

85176100 Base stationsâ??

4. So far as goods failing under 8543 is concerned, Commissioner (Appeals) has also understood what are the characteristic of those goods, which

reads as under:-

8543 Electricals machines and apparatus having individual functions, not specified or included elsewhere in this chapter.

85437099 Otherâ??

5. When the learned Commissioner (Appeals) came to the conclusion that the goods in question belong to total system without being a base station

that falls in the residuary category of the function system itself. Communication system covered by CTH 8543 being an independent category

excluded from other category of chapter 85, that does submit to the category under the heading 854., Therefore, there appears no legal infirmity in the

order of the ld. Commissioner (Appeals) who rightly classified the goods under heading 85437099. Accordingly appellate order remains un-interfered

for which appeal is dismissed.

(dictated and pronounced in the open court)

