

A M/S STERLITE INDUSTRIES (INDIA) LTD.
v.
COMMISSIONER OF CUSTOMS, CHENNAI

MARCH 19, 2007

B [S.H. KAPADIA AND B. SUDERSHAN REDDY, JJ.]

Customs Tariff Act, 1975:

C *Sub-headings 9022.19 and 9027.00—“Fully automated sequential X-ray spectrometer”—Classification—Held, Tribunal has not examined the functional aspects of the apparatus—Matter remitted to Tribunal to decide the same de-novo after examining the catalogue annexed in the records—Notification No. 46/96—Cus dated 23.7.1996.*

D **Appellant-assessee imported “Fully Automated Sequential X-ray Spectrometer” and filed its “Bill of Entry” for home consumption. It claimed benefit of partial exemption Notification No. 46/96 –Cus dated 23.7.1996 and, assessing the equipment under sub-heading 9027.00, paid the customs duty accordingly. The Revenue assessed the apparatus under Sub-heading 9022.19 and accordingly charged the customs duty.**

E **Allowing the appeal of the assessee and remitting the matter to the Tribunal, the Court**

F **HELD: The apparatus imported by the assessee is multi-functional. It has an inbuilt software and automatic analysis program. It is the software in the System which makes the system carry out multi-purpose functions. The computer processes the data. The configurations are also specified in the assembly of the Spectrometer. The catalogue/ brochure produced indicates that the Spectrometer in question would be non-functional without the computer. These aspects have not been considered by the authorities below. The Tribunal would, therefore, decide the matter *de novo* after examining the catalogue annexed as Annexure-B in its records. The Tribunal can also consider the alternative submission of the assessee, namely, that the above item can fall also within sub-heading 9027.80. It is made clear that this Court has not expressed any opinion on merits. [Para 7] [88-E; 89-A-B]**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 151 of 2002. A

From the Judgment and Order No. 1113 of 2001 dated 13.07.2001 of the Customs, Excise & Gold (Control) Appellate Tribunal, South Zonal Bench at Chennai in Appeal No. C/R-26/97/MD.

S.K. Bagaria, Rupesh Kumar and Tara Chandra Sharma for the Appellant. B

P. Viswanatha Shetty, Sunita Rao, S.J. Aristotle, Shanti Bhushan and B. Krishna Prasad for the Respondent.

The Judgment of the Court was delivered by

KAPADIA, J. 1. This civil appeal has been filed by M/s Sterlite Industries (India) Ltd. under section 130E of the Customs Act, 1962 against Order No. 1113 of 2001 passed by CEGAT ("the Tribunal") on 13.7.2001. C

2. The short question which arises for determination in this civil appeal is whether Fully Automated Sequential X-ray Spectrometer is an apparatus based on the use of X-ray under sub-heading 9022.19 as claimed by the Department or whether the said apparatus is classifiable as Spectrometer under sub-heading 9027.30 being an apparatus for physical or chemical analysis. D

3. To decide the above question, we quote hereinbelow the following Heading of Chapter 90 of the Customs Tariff Act, 1975 which reads as under: E

"CHAPTER 90

**OPTICAL, PHOTOGRAPHIC, CINEMATOGRAPHIC, MEASURING,
CHECKING, PRECISION, MEDICAL OR SURGICAL INSTRUMENT
AND APPARATUS; PARTS AND ACCESSORIES THEREOF —** F

Tariff Item	Description of goods	Rate of duty Std. Prefnl.
9022	Apparatus based on the use of X-rays or of alpha, beta or gamma radiations, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus, X-ray tubes and other X-ray generators, high	

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	physical or chemical analysis (for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes				A
					B
					C
9027.10	-Gas or smoke analysis apparatus	25%	..		
9027.20	-Chromatographs and electrophoresis instruments	25%	..		
9027.30	Spectrometers, spectrophotometers and spectrographs using optical radiations (UV, visible, IR)	25%	..		D
9027.40	-Exposure meters	25%	..		
9027.50	-Other instruments and apparatus using optical radiations (UV, visible, IR)	25%	..		E
9027.80	-Other instruments and apparatus	25%	..		
9027.90	-Microtomes; parts and accessories"	25%	..		F

4. The assessee imported Fully Automated Sequential X-ray Spectrometer from M/s Rigaku International Corporation, Japan. The said equipment is used by the assessee in its plant at Tuticorin. The said Spectrometer was imported for analyzing various alloys in the manufacture of Cathodes. The assessee filed its Bill of Entry for home consumption. They claimed assessment under sub-heading 9027.00. They claimed the benefit of partial exemption Notification No. 46/96-Cus dated 23.7.1996. They paid customs duty (basic at 25% plus 10% additional customs duty). The Department, however, assessed the above apparatus under sub-heading 9022.19, quoted above, read with the above notification and charged customs duty (basic) at 50% ad valorem plus

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A 10% additional customs duty.

5. Basically, according to the Department, Spectrometer in the present case was X-ray based Spectrometer and, therefore, the same was classifiable in sub-heading 9022.19. According to the Department, X-ray based apparatus stood covered under section XVIII of HSN also and, therefore, the goods were classifiable under sub-heading 9022.19.

6. According to the assessee, in the present case, the Spectrometer in question is specifically named in sub-heading 9027.30. According to the assessee, the Department had erred in placing reliance on HSN when the Customs Tariff Act, 1975 has specifically laid down Rules of interpretation. According to the assessee, Rule 3(a) of the Rules of Interpretation was applicable which says that the heading which provides a specific description shall be preferred to headings which provide general description. According to the assessee, under Heading 90.27 the above item Spectrometer has been mentioned without any qualification regarding the source material and, therefore, the Spectrometer is based on optical source, the X-ray source was immaterial as Spectrometer per se was classifiable under sub-heading 9027.30. Before us, the assessee submitted, in the alternative, for the first time, that the above Fully Automated Sequential X-ray Spectrometer could fall under sub-heading 9027.80 as Special Apparatus.

7. We have gone through the literature/brochure concerning Fully Automated Sequential X-ray Spectrometer. We find from the brochure that the above System which is imported by the assessee is multi-functional. It has an inbuilt software. It has an inbuilt automatic analysis program. It is the software in the System which makes the system carry out multi-purpose functions. The computer processes the data. The configurations are also specified in the assembly of the Spectrometer. *Prima facie* it appears that there is an inbuilt computer system in the Spectrometer. That computer appears to be an essential part of direct reading. These aspects have not been considered by the authorities below. The catalogue/brochure produced indicates that the Spectrometer in question would be non-functional without the computer. Modern direct reading Spectrometer incorporates a computer in the System so that they can measure, process and analyse the data. The catalogue shows the configurations which indicate *prima facie* that the computer stands integrated with the Spectrometer. The catalogue indicates the type of apparatus. The catalogue shows inclusion of software programmes and computer. The catalogue shows that the Spectrometer is so designed that

it functions in an integrated manner along with the computer and can be operated and controlled only with such computer. None of these aspects had been considered by the authorities below including the Tribunal. Hence, we remit the matter to the Tribunal to decide the matter *de novo* after examining the catalogue annexed as Annexure-B in its records. Before concluding, we may mention that our above opinion should not be treated as conclusive. The Tribunal can also consider the alternative submission of the assessee, namely, that the above item can fall also within sub-heading 9027.80. In this regard we express no opinion.

8. For the above reasons, the impugned order dated 13.7.2001 of the Tribunal (CEGAT) is set aside and the matter is remitted to the Tribunal for its fresh decision in accordance with law after examining the catalogue annexed in its record.

9. This appeal is accordingly allowed with no order as to costs.

R.P.

Appeal allowed. D