

CASE NO.:
Appeal (civil) 4436 of 2001

PETITIONER:
M/s. H.V. Industrial Electronics Pvt. Ltd.

RESPONDENT:
Commissioner of Central Excise & Customs

DATE OF JUDGMENT: 20/07/2006

BENCH:
ASHOK BHAN & MARKANDEY KATJU

JUDGMENT:
J U D G M E N T

With
CA No. 4439 of 2001, CA No. 4437 of 2001
and CA No. 4438 of 2001

BHAN, J.

The common question for consideration in these four appeals by the Commissioner of Central Excise & Customs, Aurangabad (for short "the respondent") is to the classification of "power controllers" manufactured by each of the four appellants to these appeals.

The appellants inter alia are manufacturers of electrical goods namely, power controllers also known as Light Dimmers and Heat Controllers. Until June, 1991, the appellants had classified the "power controllers" under Chapter 85, Sub-heading 8543.00 under the Central Excise Tariff Act (for short "the Tariff Act"). With effect from 25.07.1991, the appellants started classifying "power controllers" under Sub-heading 8536.90.

The Department did not accept the classification list and issued show cause notices dated 1.6.1992, 5.11.1992, 3.5.1993 and 4.10.1993, respectively to the fourth respondent herein inter alia alleging that the correct classification of the "power controllers" is under Sub-heading 8543.00 and not under Sub-heading 8536.90. Identical show cause notices proposing to deny the proposed classification by the appellant and confirm the classification earlier claimed and approved were issued, the notices also proposed recovery of duty short paid, caused by the difference between the duty payable under each of the two headings. The said show cause notices made allegation relating to valuation of goods as well, but the subject matter of these appeals is restricted to the issue of the determination of classification of "power controllers". The respondent submitted their reply to the show cause notice vide letters dated 22.4.1992, 22.6.1992, 19.11.1992 and 31.5.1993. It was submitted by them that the power controllers/light dimmers are for controlling the flow of power and for the purpose

of protecting the circuit of 230 AC Voltage from 150 Watts to 3000 Watts and therefore the said items fell under Sub-heading 8536.90 and not under Sub-heading 8543.00 which was a residuary item relating to electrical machine having individual functions not specified or included elsewhere in Chapter 85.

The Assistant Collector by his order-in-original bearing No. 84/93 dated 31.12.1993 confirmed the classification of "power controllers" under Sub-heading 8543.00 and the difference in duty demanded. The appellants filed statutory appeals before the Collector of Central Excise & Customs (Appeals) challenging the order of the respondent on the grounds set out in the appeal. The Collector (Appeals) by his order-in-appeal No. A-371/94 dated 31.12.1994, after recording a finding that the product manufactured by the appellants is used for making connection to or in electrical circuits held that the goods are classifiable under Sub-heading 8536.90 as it was for Voltage not exceeding 1000 Volts.

Being aggrieved against the order-in-appeal, the Department filed an appeal before the Customs Excise and Gold (Control) Appellate Tribunal, West Zonal Bench at Mumbai (for short "the Tribunal"). Tribunal by the impugned order accepted the appeal filed by the Department, set aside the order of the Collector (Appeals) and restored the order of the Assistant Controller. It has been held in the impugned order that the function of "power controllers" is to provide a source of current variable at the option of the user to the load to which it is connected. That it performs individual functions and hence would fall under Heading 85.43.

Being aggrieved by the order passed by the Tribunal, the appellants have filed the present appeals.

Counsels for the parties have been heard at length. Headings 85.36 and 85.43 relied upon by the parties read as follows:

"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 1000 volts.

85.36.10 - Overload protection or thermal relay, starting relay controls, for refrigerating or air conditioning appliances and machinery.

8536.90 - Other"

"85.43 - Electrical machines and apparatus, having individual functions not specified or included elsewhere in this chapter."

Heading 85.36 covers electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits, such as, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes for a voltage not exceeding 1000 volts.

The assessee-appellant has not shown any technical write-up to substantiate their claim to the effect that the items produced by them perform the function of either switching, protecting or for making connections to or in electrical circuit. Heading 85.43 covers electrical machines or apparatus having individual functions not specified or included elsewhere in the Chapter. The "power controllers" do not either switch or protect or for make connections to or in electrical circuits. Its only function is to control the degree of illumination and outflow of heat, i.e., it functions as a light dimmer and speed controller. Its function is to control the degree of illumination and flow of electric current. The apparatus whose function is to control the degree of illumination and flow of current has not been mentioned in either of the entries of Chapter 85. It performs individual function. The fact that the use of product manufactured by the respondent is to regulate the flow of electricity to the object in question, the same cannot be treated as an apparatus for making or protecting switching or making connections to or in electrical circuits. The machine/ apparatus manufactured by the appellant is for controlling or regulating the electric current/power so as to feed the required quantum of current to the other equipments connected to the circuits. Apparatus "power controller" is capable of controlling the current/power in the circuit and therefore, definitely performs the individual function. Such machine or apparatus would fall under residuary entry 85.43 and not under 85.36.

Rejecting the contention of the assessee that the power controllers would not fall under Heading 85.36, the Tribunal has recorded the following findings:

"Both headings are a reproduction of respective headings in the Harmonized System of Nomenclature (HSN) and reference to the Explanatory Notes of that nomenclature in determining the scope of the coverage of these headings is justified. Heading 85.36 speaks of Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits." Therefore, such apparatus which is intended solely or predominantly for any of these purposes, that would be

classified under that heading. Electrical apparatus which are intended to perform other functions, and incorporating a switch, relay, fuse, or plug, cannot, solely by the fact of such incorporation, be considered to be apparatus for switching or protecting electrical circuits. If that were to be the case, every apparatus that incorporates a switch or fuse or other item mentioned in the heading would be classifiable under that heading. Thus, transformers, electric lamps or television receivers incorporating a fuse or the fuse to protect against overload, or a switch to turn on the circuit would be classifiable not under headings 85.04, 85.39 or 85.28 respectively but would be classifiable under heading 85.36. The absurdity of this conclusion shows the unacceptability of the reasoning advanced in its support. It is clear that heading 85.36 is for goods solely or essentially used for the purpose specified in that heading switching or protecting electric circuit, or making connection or any switch circuits. This article therefore cannot be classifiable under heading 85.36."

The Tribunal further examined the appropriateness of the classification claimed by the assessee under Heading 85.43. It came to the conclusion that the electrical appliances or apparatus under consideration has individual functions as it does the function of controlling/regulating the electric current/power so as to feed the required quantum of current to the other equipments connected to the circuits. Its function is to provide a source of current variable at the option of the user to the load to which it is connected. We agree with both the findings referred to above by the Tribunal.

For the reasons stated above, we do not find any merit in this appeal and dismiss the same, leaving the parties to bear their own costs.