

CASE NO.:
Appeal (civil) 151 of 2002

PETITIONER:
M/s Sterlite Industries (India) Ltd

RESPONDENT:
Commissioner of Customs, Chennai

DATE OF JUDGMENT: 19/03/2007

BENCH:
S. H. Kapadia & B. Sudershan Reddy

JUDGMENT:
J U D G M E N T

KAPADIA, J.

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.

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.

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

"CHAPTER 90
OPTICAL, PHOTOGRAPHIC, CINEMATOGRAPHIC,
MEASURING, CHECKING, PRECISION, MEDICAL OR
SURGICAL INSTRUMENT AND APPARATUS; PARTS AND
ACCESSORIES THEREOF \026

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 tension
generators, control
panels and desks,
screens, examination or
treatment tables, chairs

and the like.

-Apparatus based on the use of X-rays, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus:

9022.12

--Computed tomography apparatus

30%

..

9022.13

--Other, for dental uses

30%

..

9022.14

--Other, for medical, surgical or veterinary uses

30%

..

9022.19

--For other uses

-Apparatus based on the use of alpha, beta or gamma radiation, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus:

50%

..

9022.21

--For medical, surgical, dental or veterinary uses

30%

..

9022.29

--For other uses

50%

..

9022.30

-X-ray tubes

50%

..

9022.90

-Other, including parts and accessories

50%

..

Xxx

Xxx

Xxx

9027

Instruments and apparatus for 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

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%

..

9027.40

-Exposure meters

25%

..

9027.50

-Other instruments and apparatus using optical radiations (UV, visible,

IR)

25%

..

9027.80

-Other instruments and apparatus

25%

..

9027.90

-Microtomes; parts and accessories"

25%

..

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 10% additional customs duty.

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.

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.

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.

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