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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/950 /1995 - EX[DB] Date 24/10/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E.BOMBAY
5TH FLOOR NEW CUSTOMS HOUSE JANNEX
BOMBAY
110038
C.C.E.BOMBAY Appellant
Vs
M/S UNICAON CONNECTRORS PVT.LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 823/2008- **EX[DB]** dated 22-10-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   M/S UNICAON CONNECTRORS PVT.LTD.
   BUILDING-C,FIRST FLOOR CHAKALA ROAD ANDHERI EAST MUMBAI
   110099
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 Nidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35. West Punjabi Bagh. New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
15 Office Copy
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Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Appeal No.E/950/1995- Larger Bench

(Arising out of Order-in-Appeal No.NK(689)/54/95 dated 15.2.95 passed by the Collector of Central Excise (Appeals), Bombay).

Date of Hearing:22.09.08

Date of Pronouncement: 22-10-2008

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.		Yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3. Whether Their Lordships wish to see the fair copy of the Order?	:	No.
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

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CCE, Bombay ....Appellants

[Rep. by Shri H.K. Thapur, Jt. CDR]

Vs.

M/s. Unicon Connectors Pvt. Ltd., Mumbai ...Respondent

[Rep. by None.]

CORAM: **Hon'ble Mr. Justice S.N. Jha, President**
Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

Final Order No...823/08.../Dated:...08

Per P.K. Das:

This appeal has been taken up for hearing in pursuance of the Order and Judgement dated 29.3.2007 of the Hon'ble Supreme Court in Civil Appeal No.5644 of 2001 in the matter of M/s. Unicon Connectors (P) Ltd. Vs. Commissioner of Central Excise, Mumbai-I

Commissionerate, whereby the Hon'ble Court set aside the order of the Larger Bench of the Tribunal and remanded the matter to the Tribunal for a fresh decision in accordance with law. By Final Order dated 2nd May, 2001, the Tribunal allowed the appeal filed by the Revenue and held that "Connector fitted with wire" is classifiable under sub-heading No.8544.00 of the First Schedule to Central Excise Tariff Act, 1985 (in short "Tariff").

2. In this case, "Connector with wire" was classified under sub-heading No.8536.00 of the Tariff by the Commissioner (Appeals) and accepted by the Respondent (in short "assessee"). Revenue filed this appeal to classify under sub-heading No.8544.00 of the Tariff.

3. The assessee was engaged in the manufacture of "connectors with or without wire". They filed classification lists under Rule 173B of the erstwhile Central Excise Rules, 1944 during the period 1991 to 1993 classifying the said products under sub-heading No.8529.00 of the Tariff as parts of TV/Radio for use solely or principally with the apparatus of Heading No.8525 to 8528. The Asstt. Commissioner of Central Excise by letter dated 30.09.93, approved "Connector without wire" under sub-heading No.8536.90 of Tariff and duly accepted by the assessee. Further, by order dated 26th October, 1993, the Assistant Commissioner approved "Connectors with wire" under sub-heading No.8544.00 of the Tariff. The assessee preferred an appeal before the Commissioner (Appeals), whereby the product was classified under Heading No.8536.90 and set aside the classification under sub-heading No.8544.00 of the Tariff.

Revenue filed appeal before the Tribunal against the order of the Commissioner (Appeals). A Division Bench of the Tribunal by Order dated 2nd January, 2001 referred the matter to the Larger Bench. The findings of the Tribunal by Order dated 2nd January, 2001 are as under:-

> "*When the matter was heard on merits, after restoring the appeal, it was brought to our notice that Bombay Bench of the Tribunal, in a case involving identical goods, has held that the goods would be classifiable under Tariff Item 85.22 or 85.29. The learned DR submitted that the correct classification of the goods would be under Tariff Item 85.44. He also submitted that, in relation to similar goods, like wire and cables Tribunal has already decided that the correct classification would be under Tariff Item 85.44. From this, it would appear that there are conflicting decisions with regard to classification of connectors. We, therefore, feel that the issue relating to classification of such connectors should go before a Larger Bench of the Tribunal for resolving apparent conflict. The matter is, therefore, referred to a Larger Bench of 3 Members.*"

4. By Final Order No.254/2001-B dated 5.3.2001, the Larger Bench of the Tribunal as reported in 2001 (131) ELT 601 (T-LB), held that the goods in question are classifiable under Heading No.85.44 of Tariff and allowed the appeal filed by the Revenue. The assessee filed appeal before the Hon'ble Supreme Court against the order of the Larger Bench of the Tribunal.

5. The Hon'ble Supreme Court by Order & Judgement dated 29th March, 2007 set aside the Larger Bench decision and remanded back the matter to the Tribunal. It has been observed by the Hon'ble Court

that the Commissioner (Appeals) while classifying the product relied upon the three circumstances to hold that the product would fall under sub-heading No.8536.90. It has been observed that the Tribunal should have recorded specific finding on the said three issues. Those three circumstances as recorded in the order of the Hon'ble Supreme Court are reproduced below:-

> (i) "that on 22nd January, 1993, Indian Institute of Technology, Powai, Bombay, to whom the matter was referred by the Assistant Collector of Central Excise, seeking its opinion as to whether the items produced by the appellant would fall under S.H.No.8544.00 or S.H. No.8536.90, gave its opinion that this should be classified under S.H. No.8536.90 and not under S.H. No.8544.00
>
> (ii) That such types of connectors (which are being manufactured by the appellant) are being classified under S.H. No.8536.90 in the jurisdiction of Bombay and three collectorates and even the imported PCB connectors are also classifiable under S.H. No.8536.90, in support of which the appellant had produced documentary evidence; and
>
> (iii) That the connectors attached or soldered with the wires are still known as connectors only and they cannot be termed as wires with connectors for the purpose of classification of the same under chapter sub-heading No.8544.00."

6. Heard the learned Joint CDR on behalf of the Revenue and perused the records. None appeared on behalf of the assessee.

7. It is revealed from the order of the Commissioner (Appeals) that the assessee was purchasing raw materials viz. duty paid wire of various sizes and plastic products to make moulded parts of PCB connectors. They were also purchasing different parts of metal sheets, wires of brass, phosphor, bronze and copper etc. for manufacture of parts of TV sets and other electronic apparatus known as "Connectors with Wire" and "Connectors without wire". There is no dispute on classification of "Connectors without wire". The dispute arises when the assessee manufactures connectors with wire. The Revenue proposed to change the classification because the connectors soldered with the wires are changing its character and classifiable under sub-heading No.8544.00. The relevant tariff descriptions are read as under:-

"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, lampholders, junctions boxes), for a voltage not exceeding 1,000 volts.
	8536.10	Overload protection or thermal relays, starting relay controls, for refrigerating and air-conditioning appliances and machinery.
	8536.20	Other
85.44		Insulated (including enameled or anodized) wire, cable (including co-axial cable) and other insulated electric conductors, whether or not fitted with connectors; optical

fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors."

8. We find that the heading No. 85.44 covers the goods Insulated Wire, Cable and other insulated electric conductors whether or not fitted with connectors. The learned Joint CDR drew the attention of the Bench to HSN Notes to Heading No.85.44, as under:-

> " *Wire, Cable, etc. remain classified in this heading if cut to length or fitted with connectors (e.g. plugs, sockets, lugs, jacks, sleeves or terminals) at one or both ends. The heading also includes wire etc. of the types described above made up in sets (e.g. multiple cables for connecting motor vehicles sparking plugs to the distributor).* "

On plain reading of Heading 85.44 and HSN Notes, we are of the view that Heading 85.44 refers to only those goods namely insulated wire, cable and other Insulated conductors irrespective of the fact it is fitted with connectors or not. The words "wire, cable, etc. remain classified in this heading if cut to length or fitted with connectors" in HSN Notes to Heading No.85.44 make it clear that it would apply to wire, cable, etc. even it is fitted with connectors or not. We find that in the present case, the assessee were engaged in the manufacture of connector with or without wire and not wire, cable and other Insulated Conductor. So, the classification of "Connector with Wire" under heading No.85.44 as proposed by the Revenue has no merit.

9. In this connection, it is appropriate to discuss the finding of Commissioner (Appeals) of third circumstances as reproduced in the order of the Hon'ble Supreme Court. The Commissioner (Appeals) observed that the connectors attached or soldered with the wires are still known as connectors only and they cannot be termed as wire with connectors, for the purpose of classification of the same under sub-heading No.8544.00. It is seen that the Revenue has not disputed this fact in the grounds of appeal. It is contended by the learned Joint CDR that the product "connector with wire" is essentially used for transmission of energy and information remitting in value addition of the product with which they are used and specifically designed for and appropriately classifiable under Heading No.85.44 of the Tariff. It is also contended that the product has a general use and application similar to insulator wire and cables. The learned DR relied upon the decision of the Tribunal in the case of Shakun Products Vs. CCE, Kanpur reported in 1997 (96) ELT 184 (Tribunal).

10. We do not find force in the submission of the ld. Joint C.D.R. Rule 1 of General Rules for the Interpretation of the First Schedule to Excise Tariff provides that the titles of Sections, Chapters and Sub-Chapters are provided for case of reference only; for legal purposes, classification shall be determined according to the terms of heading. If the wording of the heading is clear enough to understand the issue, there is no need to resort the end use for classification unless specifically mentioned in the Tariff. We find that Heading No.85.44 of the Tariff is for the goods Insulated wire, cable and other insulated electric conductors. We

agree with the finding of the Commissioner (Appeals) that connectors fitted with wire are still known as connectors and they can not treated as Insulated wire, cable etc. Therefore, connectors with wire cannot be classified under heading no.85.44 of the Tariff.

11. The case law relied upon by the ld. Joint C.D.R. is not applicable in the present case. In the said case, the assessees were manufacturers of "Main Cable Harness", "Handle Bar Harness", "HT Cable Assembly" etc. The assessee received PVC Wires/insulated wires and insulated electric conductors classified under 8544.00 of the Tariff in their factory on payment of duty, these wires cut to different sizes according to specifications and then fitted with connectors such as terminal plugs. In the present case, the assesse was engaged in the manufacture of connectors, comprising of outer plastic moulded housing of special grades engineering plastics, Brass, Phosper, Bronze, etc. The said connectors are male connectors and female connectors. These connectors were fitted with wire, purchased on payment of duty. So, the goods in question in the present case are different and the case of Shakum Products (supra) as relied upon by the ld. C.D.R. is not applicable herein.

12. The assessee strongly relied upon the decision of the Tribunal in the case of Commissioner of Central Excise, Mumbai Vs. M/s. Rajkumar Engineers vide Order No.C-11/1339/99-WZB dated 20.05.99. In the said case, Revenue proposed to classify PCB connectors with wires under heading No.85.44 of Tariff, which was rejected by the Tribunal. We agree with the finding of the Tribunal in the case of M/s. Rajkumar

Engineers (supra) that the description in heading no.85.44 speaks of insulated wire fitted with connectors, where wire is sold as such or with connectors.

13. We find that the Asstt. Commissioner of Central Excise classified the connectors without wire under sub-heading no.8536.90 of the Tariff, which was accepted by the parties. We have already stated that we accepted the findings of the Commissioner (Appeals) that connectors fitted with wire still remain as connectors and it cannot be equated with wire with connectors. Therefore, the Commissioner (Appeals) rightly classified the connectors with wire under Heading No.8536.90 of the Tariff.

14. In view of the above discussion, we hold that the product in question connectors with wire manufactured by the assessee can not be classifiable under Heading No.8544 as claimed by the Revenue. We, therefore, uphold the order of the Commissioner (Appeals). The appeal filed by the Revenue is rejected.

(Order pronounced on 22-10-2005

(Justice S.N. Jha)
President

(M. Veeraiyan)
Member(Technical)

(P.K. Das)
Member(Judicial)

Ckp.