CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

<u>COURT-I</u>

Date of hearing/decision: 03.01.2018

Appeal No. C/51633/2017- [DB]

[Arising out of the Order-in-Appeal No. D-I/I MP/258/2017 dated 17/07/2017 passed by the Commissioner of Customs (Appeals), New Delhi.]

M/s Subros Ltd … Appellant

Vs.

CC, New Delhi …Respondent

Appearance:
Present Ms Nupur Maheshwari, Advocate for the appellant
Present Shri P. Juneja, DR for the respondent

Coram: Hon'ble Justice Dr. Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

<u>FINAL ORDER No. 50021/2018</u>

<u>Per B.Ravichandran</u>

1. The appellant is aggrieved by the order dated 17/07/2007 of Commissioner of Customs (Appeals), New Delhi. The dispute in the present appeal relates to correct classification of Thermistor, Thermistor-sub assembly/ assembly imported by the appellant. The appellant claimed the classification under CTH---85334030, Thermistors. The revenue objected to the said classification holding that these 'Thermisters' are used in automobiles and are accordingly to be classified under Chapter heading 84159000 as parts of auto air conditioners. The lower Authorities affirmed the view of the revenue and accordingly demanded the differential duty on such classification.
2. The Ld. Counsel appearing for the appellant submitted that the 'Thermisters' are specifically mentioned under CTH 85334030 and cannot be classified under Chapter 84 as parts and components of air conditioners.

3. She relied on the Note 2 (a) of Section XIV of the Customs Tariff Act, 1985, and on the decision of the Tribunal in the case of classification of resistors vide Final Order No. 58389/2017 dated 12/12/2017 in the appellants own case. The Tribunal in the said case relied on the decision of Hon'ble Supreme Court in ***Delton Cables Ltd 2005 (181) ELT 373 (SC).***

4. The Ld. AR reiterated the findings of the lower Authorities.

6. We have heard both sides. The dispute in the present case relates to the correct classification of Thermistors sub-assemblies imported by the appellant. We note that contesting CTHs are falling under chapter 84 or Chapter 85. The Department proceeded to classify the product based on the ultimate use. The appellant contented that applying note 2(a) of Section XVI, the classification of specified products identified by name should be in the respective heading only. We note that in the appellant's own case for similar type of product, namely, resistor blower, almost identical dispute came up before the Tribunal. In the Final Order dated 12/12/2017 the Tribunal examined the competing Tariff Entries and concluded that in view of specific entries under Chapter 85 the product should be classified under the said Chapter only. Reliance was placed on the decision of the Supreme Court in Delton Cables Ltd (supra). For ready reference relevant portion of the Tribunal's order is reproduced below:-

> *7. Reference to Section Note 2(a) and 2(b) has been made in the case. We note the Hon'ble Supreme Court in CCE vs. Delton Cables Ltd. -2005 (181) ELT 373 (SC) held as below:*
>
> > *"3. There appears to be no dispute that were it not for the Section Note 2(b), the item in question would be classified under Tariff Heading 85.44 as contended by the appellant. Section Note 2(a) an (b) respectively provide as follows:*

> *"(a) Parts which are goods included in any of the headings of Chapter 84 or Chapter 85 (other than Heading Nos. 84.85 and 85.48) are in all cases to be classified in their respective headings,*
>
> *(b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of Heading No. 84.79 or Heading No. 85.43) are to be classified with the machines of that kind. However, parts which are equally suitable for use 5 Customs Appeal No. 50400 of 2017 principally with the goods of Heading Nos. 85.17 and 85.25 to 85.28 are to be classified in Heading 85.18."*

4. It is clear from a reading of the two clauses to the Section Note that Clause-b would only apply once it was found that the items in question were not specifically classifiable under their respective headings. As has been clearly said by the Collector (Appeals) "from the sequence of the paragraphs given under Section Note 2 it is clear that the question of switching over to Section Note 2(b) can arise only after ensuring that the parts are not covered by Section Note 2(b) which begins with the expression "other parts" meaning thereby that the parts which are not covered by Section Note 2(a) would be considered for coverage by Section Note 2(b). One cannot therefore directly jump over to Section Note 2(b) without exhausting the possibility of Section Note 2(a).

5. In our opinion, the Tribunal erred in wholly ignoring Section Note 2(a) and only considering the applicability of 2(b). The decision is, therefore, erroneous and we, accordingly set it side."

8. Further, similar view has been held by the Apex Court in Secure Meters Ltd. vs. CC, New Delhi -2015 (319) ELT 565 (SC). The Supreme Court held that going by the plain reading of Note 2(a) it is clear that LCDs, which are goods and are used as parts in the final product mentioned in Chapter 90, namely, electricity supply meters, are to be classified in its respective heading, which is 9013. The Apex Court held that the said item cannot be classified under heading 9038 as parts of electricity supply meter.

9. Impugned order relied on the Section Note 2(a) of Section 16 and Rule 3(a) of Tariff Classification General Rules of Interpretation for arriving at a finding. We note that application of Note 2(b) can be resorted to only after examining and exhausting Note 2(a). The present case, Note 2(a) has relevance and the impugned order correctly following the said Section Note 6 Customs Appeal No. 50400 of 2017 alongwith explanation given under HSN to classify the resistor under Chapter 85. We find no infirmity *in such finding. Accordingly, the appeal by Revenue is dismissed*

5. In view of the above decided case of the Tribunal following the ratio of the Apex Court, we find no merit in the impugned order. Accordingly the same is set aside and the appeal is allowed.

[Order dictated and pronounced in the open court]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Rekha