

Telco Vs. Collector of Customs.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-03-1997

Reported in : (1997)(94)ELT549TriDel

Appellant : Telco

Respondent : Collector of Customs.

Judgement :

1. The appellants herein imported two sets of Memory Array Boards 64 MB for ELXSI 6420 Computer System consisting of 32 MB Memory boards and Fasteners MAB for E Plane and sought clearance under Heading 8471.93 of CTA read with Notification 58/88, dated 1-3-1988. The claim was rejected by the Assistant Collector on the ground that the imported Memory Arrays known as Memory modules are not known as storage units in the computer trade or in common parlance and the goods were not storage units of Heading 8471.93. The goods were assessed as computer accessories under Heading 8473.30. The Collector (Appeals) has held that the imported goods satisfied the conditions for being considered as accessories because they were designed for mounting on memory controller and they enhance the range of operations by enhancing the memory of the existing system. Hence this appeal.

2. We have heard Shri V. Sridharan, learned Counsel and Shri S.N. Ojha, learned DR and carefully considered their submissions.

3. Note 5B to Chapter 84 is relevant for the purpose of understanding particularly when a Unit is being treated as a Unit classifiable under 84.71. The said Note stipulates that: "Automatic data processing machines may be in the form of systems consisting of a variable number of separately housed units. A unit is to be regarded as being a part of the complete system if it meets all the following conditions: (a) It is connectable to the Central processing unit either directly or through one or more other units.

(b) It is specifically designed as part of such a system (it must, in particular, unless it is a power supply unit, be able to accept or deliver data in a form (code or signals) which can be used by the system). Such unit presented separately are also to be classified in Heading No. 84.71".

4. From the above it is seen that, in order to merit assessment under 84.71 the goods have to satisfy three requirements : 5. In paragraph 6 of the impugned order, the lower appellate authority has given detailed findings as to why the goods merit classification under 84.73 and for ruling out classification under 84.71. The relevant portion of the impugned order is reproduced below : "The learned Assistant Collector has taken a view that since the impugned Memory Array Boards increase the capacity of the existing system, they directly contribute to increase its range of operations and hence are appropriately classifiable as accessories under Heading 84.73. In this context it is relevant to refer to notes given in Harmonised Commodity Description and Coding System for Heading 84.73. As per the said Note for being an accessory under Heading 84.73 the equipment should be interchangeable parts of devices designed to be mounted on a machine to adapt it for a particular operation or to perform a particular service relative to main function of the machine or to increase its range of operations.

Unless the above conditions are fulfilled the equipment will not be accessory. The appellants have stated that the impugned memory array boards are not mounted on the Central Processing Unit and they are connected to CPU through Memory Controller, Gigaport & Gigabus. It is observed from the catalogue that the impugned goods are mounted in the Memory Controller, which in turn is connected to CPU through GIGABUS. Therefore, the impugned goods are designed for

mounting on a machine i.e. Memory Controller and hence satisfy one condition of the notes given under Heading 84.73 in HSN. The appellants contention that the impugned goods are not mounted on CPU and hence not classifiable under Heading 84.73 is not correct because as per the Explanatory Notes given under Heading 84.73 accessory need not be mounted on CPU. If an item is designed for mounting on a machine and if it enhances range of operations of system then it is to be considered as an accessory. The impugned goods satisfy both the conditions as they were designed for mounting on Memory Controller and they enhance the range of operations by enhancing the memory of existing system. In view of this the impugned goods merit assessment under Heading 84.73 as an accessory only." 6. Since admittedly the imported goods are not contained in separately housed units, they do not satisfy the conditions for classification under Heading 84.71 and we, therefore, see no reason to interfere with the findings of the lower appellate authority as contained in the impugned order, uphold the same and reject the appeal.

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