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Commissioner of Customs Vs. Eltech Enterprises

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-05-1998

Reported in : (1999)(112)ELT877Tri(Mum.)bai

Appellant : Commissioner of Customs

Respondent : Eltech Enterprises

Judgement :

1. The appeal is directed against the order of the Commissioner of Customs (Appeals), Mumbai by which the Commissioner (Appeals) has allowed the respondents' appeal. The respondents are not present and have requested for decision on merits.

2. The facts are that the respondents imported parts of calculator (instruction manual) and cleared it on payment of duty vide B/E on 4-2-1993. They filed refund claim on the ground that calculator (instruction manual) should be assessed to duty under Chapter Heading 4901.00 of the Customs Tariff Act at nil rate of duty. The jurisdictional Assistant Commissioner of Central Excise found that on merits, the refund has to be granted, but the Assistant Commissioner held that there was no evidence to prove that the incidence of duty which is being claimed as refund has not been passed on to any other person. The Assistant Commissioner found that the Chartered Accountant certificate produced by the respondents was not sufficient as it has not been supported by sale bills and cost sheet before and after the importation. The Assistant Commissioner, therefore ordered that in principle the refund is admissible but since they have not proved that the duty incidence has

not been passed on to any other person, the Assistant Commissioner directed that the refund amount of Rs. 38,326/- be credited to Consumer Welfare Fund under Section 27 of the Customs Act, 1962. The appeal against the Assistant Commissioner order was allowed by the Commissioner (Appeals) who found that the Chartered Accountant certificate is not challenged by the department and the Chartered Accountant certificate shows that the duty burden has not been passed on to any other person.

3. Shri Ramtake, the ld. DR for the appellant Commissioner contended that the respondents have not substantiated the Chartered Accountant's certificate by production of sale bills and cost sheet and the department cannot go only on the basis of Chartered Accountant's certificate. The respondents in their letter dated 18-11-1997 have contended that it is a common practice in the trade that instruction manuals are always supplied free of cost along with the items of the electronic goods.

4. We have carefully considered the submissions. The Assistant Commissioner has sanctioned the refund on merit but has directed that the amount be deposited in the Consumer Welfare Fund in the absence of evidence to prove that the duty burden has been borne out by the respondents only. On perusal of the record, we find that the Assistant Commissioner was justified in seeking documentary evidence to back up the Chartered Accountant certificate because the certificate itself seems to have been based on checking of the respondents' record by the Chartered Accountant. In such a situation, the respondents should have been in a position to produce the relevant sale bills or documents relating to placing of the order and the terms of supply which are surrounding corroborative circumstances of proof that the burden of duty has not been passed on to any other person. In this context, it is also seen that it is not an import of calculators along with instruction manual but the instruction manual seems to have been imported by themselves separately. In these circumstances, the Chartered Accountant certificate is not sufficient and it cannot be accepted as the sole document to satisfy the department that the duty burden has not been passed on to any other person. We, therefore, set aside the impugned order and allow the department's appeal.

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