

Computer Peripheral Devices Vs. Commissioner of C Ex.

Computer Peripheral Devices Vs. Commissioner of C Ex.

SooperKanoon Citation : sooperkanoon.com/13885

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jul-17-1998

Reported in : (1998)LC277Tri(Chennai)

Appellant : Computer Peripheral Devices

Respondent : Commissioner of C Ex.

Judgement :

1. This is an appeal against Order-in-Original No. 30/93, dated 15-3-1993 by Collector of Central Excise, wherein duty demand of Rs. 18,51,581.97 has been confirmed and a penalty of Rs. 1,50,000/- imposed for the period 9-8-1990 to 25-3-1991 and an redemption fine of Rs. 1.5 lakhs for redemption of plant etc., confirming also classification of "Call Duration Indicator" (Public Call Office Monitor) under brand name "Telephone Traffic Analyser-TTA 01" under sub-heading 6517.20. The show cause notice had denied benefit of exemption under SSI Notification No.175/86-C.E., dated 1-3-1986 because the said brand name belonged to M/s. Analog Digital System, Bangalore, who are not SSI under said Notification and also alleged undervaluation by not including training charges. There was also an allegation of clandestine removal of 243 units without duty etc. the impugned order, gave following reliefs :- (a) allowed benefit Notification No. 175/86-C.E., TTA-01 was not found to be a brand name; and 2. Heard learned Advocate Shri R. Chandra Kumar for appellants and learned JDR Shri Rama Rao for department. With regard to inclusion of training charges Id. Advocate submitted as follows : (i) Training and Programming was done by M/s. Digitation (after they

exceeded SSI exemption limit). Only as long as they were an SSI unit, they collected these charges and provided service. As sales grew, shortage of staff etc. and sales to remote areas compelled them to handover this activity to Digitation.

(ii) There was no relationship with Digitation whose activities, were independent and there is no nexus with manufacture of the product.

(iii) Learned Commissioner in the impugned order has added this to ACO value on 4 grounds :- (a) Commission of 15% to my dealers is inclusive of training and programming charges; (b) value of training/programming is 2/3rd or 1/2 of assessable value.

3. Learned Advocate argued that this is an illegal order because there is no evidence of :- (c) as is evidenced by affidavit of trainees, training etc. at site involves 1 to 20 days depending on persons grasp; He also submitted that this was Post Manufacturing Expenses and that a unilateral uniform value for all training classes was adopted by Learned Commissioner. He also cited - 4. Ld. JDR counters by submitting that impugned order is detailed and a fully speaking one. Digitation is a deliberately created entity to facilitate under valuation. Training was merely to familiarise how to operate it and cannot constitute 60% of the charges. He reiterated findings in Order-in-Original.

5. We first consider this aspect. We have carefully considered arguments on both sides and case records. We find that the charge of undervaluation does not survive because of the following reasons :- (i) neither the impugned order nor the show cause notice leads and examines any evidence at all which goes to show that M/s. Digitation is a dummy created by appellants. To reasonably so conclude, evidence of direct or indirect funding, some corroboration of an understanding in this regard and this is supported by some statements of employees/management of Digitation is necessary.

Nothing forthcoming; (ii) there is no evidence at all led and considered regarding any flow-back of training/programming fees (or partial flowback) to appellant; (iii) learned Commissioner's observation that 2/3rd or 1/2 the value is towards this activity certainly raises a deep suspicion; but it cannot be added to assessable

value on mere suspicion, in the absence of flow back and mutuality of interest, particularly when appellant claims it to be post manufacturing expenses. We note that in the decision of Auto Control in 1993 (63) E.L.T 156 the Tribunal has held that training and servicing charges are PME and not includible in assessable value. We also apply the ratio of this Tribunal's decision on service charges at site not includible in assessable value in the case of Kerala State Electronics Development Corporation in 1996 (84) E.L.T. 456; and (iv) we cannot deny that an electronic instrument with in-built microprocessors etc. do need some programming and training. The cost thereof would include travel to remote areas and stay there of their personnel. It has not been investigated and shown whether the billing on this account was abnormally high after setting off such expenses. The impugned order summarily brushes aside the affidavits of trainees in this regard.

6. Therefore, considering all the facts and circumstances of the case, we are of the opinion that the benefit of doubt goes to the appellants and out of the total amount of duty demand confirmed, an amount of Rs. 10,09,418/- (as calculated by Id. Advocate) needs to be set aside.

However, this Tribunal has not verified the calculation of this amount and orders that the original authority shall get this done when dispensing consequential relief.

7. Learned Advocate for appellants has submitted against charge of clandestine removal on following grounds :- (i) It is now limited to 223 units only involving duty of Rs. 8,42,163/-; (ii) Non-statutory documents like private diary/note-book, relied upon are not good evidence; (iii) The statement of dealers only says that invoices received showed duty element but gate passes were not reviewed; (iv) Director in his statement admitted possible removal of 140 units, not 223. Duty of about Rs. 3 lakhs has already been paid on this; (vi) that most units received as rejects from DOT and then not being licenced unit (under SSI) documentation under Rule 173H was not necessary for these; and (vii) that no enquiry was made from any customer.

9. Learned JDR reiterated findings in Order-in-Original which are very detailed.

10. We have carefully considered both sides. We have also perused the case-laws cited above. In K.R. Steel Union, it was held that once the respondents had produced evidence like GP 1 etc., burden of disproving them and establishing removal was on department. This is not the facts in this case. No such documentary counter is pleaded here. Therefore, this is not of much help to the appellants. In Kashmir Vanaspati (supra) it is held that note-books maintained by labourers is by itself not strong and reliable evidence and needs strong corroboration. Others cited are in the same vein. We have considered these. The impugned order does not solely rely on these. There is a plethora of evidence led and discussed from para-19 onwards therein. It is not necessary to repeat them as they are on record. We find that there are statements of Managing Partner Shri Patel, statements of a number of dealers, clear documentary evidence to show gross irregularities in serial numbers, inculcatory statements by many buyers/recipients showing that often no GP 1s were received by them. Even invoices were not received in many cases. Appellants have not led a single conclusive evidence to effectively controvert these. On the contrary, Partner, Shri Patel, unequivocally admits clandestine removal of 140 units. When the value of production slips is viewed in this context, their evidentiary value cannot be brushed aside in this case. We, further, find that the grounds contained in Para 21 of the impugned order with respect to 41 machines suffers from no infirmity particularly because (a) none of the letters relied upon by appellants as evidence of return of defective units mentions any serial number; (b) the units mentioned in Annexure C of the appellants reply at original stage do not match the return statements; and (c) even if the appellants were an SSI unit, nothing prevented them in maintaining detailed accounts of serial number of unit, date of return, cross reference of compliant, details of clearance after repairs etc. This is normal prudent business requirements. Whatever evidence they have submitted does not hold good as found clearly in the impugned order. We agree with these very detailed and objective findings from Paras 21 to 26 and we find nothing therein which compels us to interfere with these findings.

11. Considering all the discussions above, we hold that while the charge of under valuation is liable to be set aside as benefit of doubt goes to appellants, the duty demand on clandestine removal as contained in the impugned order is liable to be

confirmed. Ordered accordingly.

In view of this, the penalty imposed is reduced to Rs. 50,000/- (Rupees Fifty Thousand only) and the redemption fine also reduced to Rs. 25,000/- (Rupees Twenty Five thousand only). The appeal succeeds partially in above terms.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com