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

Logitronics Pvt. Ltd. Vs. Commissioner of Customs

Logitronics Pvt. Ltd. Vs. Commissioner of Customs

SooperKanoon Citation : sooperkanoon.com/14177

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-20-1998

Reported in : (1999)(111)ELT643TriDel

Appellant : Logitronics Pvt. Ltd.

Respondent : Commissioner of Customs

Judgement :

1. This appeal is filed by M/s. Logitronics Pvt. Ltd. The matter relates to the refund claim filed in respect of the goods imported - computer monitors - claiming the benefit of the Customs Exemption Notification No. 93/95-Cus., dated 18-5-1995 in respect of goods already cleared out of customs charge. The Asstt. Commissioner, Customs had rejected the refund claim on various grounds; he had observed that the conditions of Notification No. 93/95-Cus. had not been fulfilled, the monitors imported were completely finished items and were not for use in the manufacture of any other product and no undertaking as provided in that notification was submitted at the point of import. On appeal the Commissioner, Customs (Appeals) confermed the view taken by the Asstt. Commissioner, Customs. She also referred to the Tribunal decision in the case of M/s. Kooverji Devshi & Co. Pvt. Ltd. v.Collector of Customs, Bombay -1990 (47) E.L.T. 266 Tribunal, and observed that the monitors were imported for use with the computers supplied to the customers for cash collection functions. The matter was fixed for hearing on 20-8-1998. When the matter was called no one appeared for the appellants. The notice for today's hearing had been sent on 20-7-1998. The

appellants are from Noida in U.P.2. We have heard Shri R.S. Sangia, JDR for the respondents and have gone through the facts on records.

3. We find that 50 pieces of computer monitors had been imported and bill of entry had been filed on 28-6-1995. The goods were assessed under Customs Tariff Sub-heading 8528.10 with the benefit of Customs Notification No. 59/95. The duty was paid on 7-7-1995 under protest, the refund claim was filed on 9-8-1995, the amount of refund involved is Rs. 30,877/-. We find that the Asstt. Commissioner, Customs had rejected the refund claim on the ground that the benefit of exemption Notification No. 93/95-Cus., dated 18-5-1995 was not available to the finished goods and was available only to the parts and spare parts. We find that under the said Notification the goods specified in the table annexed to that notification and their assessories and parts were eligible for exemption. At serial No. 26 of the table the goods "monitor" are described. We find that the import of the finished goods as listed in the table as well as the assessories of such goods and the parts of such goods were eligible for the benefit of exemption. The conditions (1) and (2) are with regard to the parts and spare parts respectively. As the goods imported were monitors we consider that these conditions were not applicable to the goods in question, we therefore do not agree with the view taken by the Asstt. Commissioner of Customs.

4. The Learned Commissioner Customs (Appeals) had referred that the goods imported were not connected with the medical equipment of the type listed in the table to the notification. We find that, the goods monitor have been independently described and there is nothing to indicate that only those monitors which were used alongwith the medical equipments were covered by the said exemption notification. We find at serial No. 27 the goods are video-processor.

5. The learned departmental representative agreed that the notification No. 93/95-Cus. is not restricted to only medical equipment. Taking all the relevant facts and considerations into account we do not agree with the view taken by the adjudicating and the appellate authority. As a result the appeal filed by M/s. Logitronics Pvt. Ltd. is allowed. The refund will however be subject to the law of unjust enrichment as per Supreme Court decision in the case of M/s. Mafatlal

Industries Ltd. v.Union of India -1997 (89) E.L.T. 247 (S.C.). With the above observations, the appeal is allowed. Ordered accordingly.

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