

Computer Aid Vs. Commissioner of Customs

Computer Aid Vs. Commissioner of Customs

SooperKanoon Citation : sooperkanoon.com/19015

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-28-2000

Reported in : (2001)(130)ELT68TriDel

Appellant : Computer Aid

Respondent : Commissioner of Customs

Judgement :

1. In this appeal, the appellants have challenged the order of the Commissioner of Central Excise confirming a demand of duty and imposing penalty under the provisions of the Central Excise Act, 1944 (CEA) and also confiscating goods of foreign origin, with option for redemption thereof on payment of redemption fine, and imposing penalty under the provisions of the Customs Act, 1962.

2. The brief facts of the case are that the Central Excise officers, who visited the appellants' premises on 15-7-1994 and searched the premises, found that the party was engaged in the manufacture and sale of computer sets falling under Chapter Sub-Heading 8471.00 of the Central Excise Tariff without necessary registration with the Central Excise Department and without observing other necessary formalities under the CESA and the Rules thereunder; that the appellants were also found to have engaged in the purchase and sale of various computer accessories of foreign origin without any documents evidencing legal import and possession of such goods; that the officers seized such computer accessories of foreign origin on the reasonable belief that the same were liable to confiscation under Section 111 of the Customs Act; that the officers resumed

various documents relating to manufacture and sale of computer sets to various buyers; that the proprietor of the appellant-firm, in his statement dated 3-8-1994, admitted manufacture and sale of computer sets and accessories thereof since September, 1992 without obtaining Central Excise registration; that the documents resumed from the appellants' premises revealed that they had sold computer sets to different buyers; that, on the basis of the evidence gathered by the officers, the party manufactured and sold 15 sets of computers valued at Rs. 5,77,495/- involving Central Excise duty to the tune of Rs. 86,624.25; that it appeared that the computer accessories seized by the officers were liable to confiscation under Section 111 of the Customs Act in the absence of documentary proof of licit import and possession of such goods; that the Department, by show-cause notice, proposed to recover the aforesaid duty amount of Rs. 86,624.25 on the clearances of 15 computer sets effected clandestinely during the period September, 1992 to 15-7-1994, under Rule 9(2) of the Central Excise Rules read with the proviso to Section 11A(1) of the CESA and, further, proposed to impose penalty on them under Rule 173Q of the Central Excise Rules; that the Department, by the show cause notice, further proposed to confiscate the seized goods under Section 111 of the Customs Act and impose penalty on them under Section 112 of the Act; that the appellants contested the show cause notice and that the Commissioner adjudicated the dispute as per the order impugned in the present appeal.

3. We have carefully examined the impugned order and connected records.

We have also heard learned Advocate, Shri A.P. Mathur for the appellants and learned SDR, Shri K. Srivastava for the respondent.

4. Learned Counsel has reiterated the grounds of the appeal and has prayed for allowing the appeal. Learned SDR has reiterated the discussions and findings of the adjudicating authority and has urged to reject the appeal.

5. On the question of recovery of Central Excise duty on the computer sets cleared by the appellants during the period of dispute, the allegation of the Department is that the appellants manufactured and sold computer sets falling under Sub-Heading 8471.00 of the Central Excise Tariff during the said period clandestinely without having obtained registration with the Central Excise Department and

without observing other formalities in terms of Rule 174 read with Section 6 of the CESA, and Rules 9, 52A, 173B, 173C, 173F, 173G and 226 of the Central Excise Rules. The appellants contested this allegation by submitting that what they did was only to purchase from the open market three units of computer system viz. Central Processing Unit (CPU), Key Board and Monitor and connected the same with power supply at the customers premises and that they did not engage themselves in any 'manufacture' of computer sets. They submitted that assembly of the three units did not amount to 'manufacture' and therefore the computer sets cleared by them were not liable to Central Excise duty. They also submitted that the Department had no evidence to show clandestine removal of the goods. We have examined the submissions of the appellants as reiterated by their Counsel and have found that the records resumed from the party by the Central Excise officer clearly showed sale of 15 computer sets to various customers valued at a total amount of Rs. 5,77,495/- and involving a Central Excise duty of Rs. 86,624.25. The proprietor of the appellant-concern, in his statement given to the officers, had clearly admitted, in answer to a specific query, that they purchased accessories of computer systems from market and assembled them into computer sets. There was no denial of the fact that the appellants had so assembled computer parts into computer systems and sold the same to various customers without Central Excise registration and without observing other necessary Central Excise formalities. The Department's allegation as contained in the show cause notice in this behalf, thus, stood proved. It was on this basis that the lower appellate authority confirmed the demand of duty and imposed a penalty after holding that the process of assembling the aforesaid units into computer sets, which were distinct and different in name, character and use from the components used and were known as 'computer sets' in the market, amounted to manufacture and therefore the computer sets were exigible to Central Excise duty. We are in complete agreement with this decision of the Commissioner. However, having regard to the facts and circumstances of the case, we hold the view that the penalty imposed by that authority is exorbitant and, therefore, we reduce the same to Rs. 10,000/-, while confirming the demand of duty of Rs. 86,624.25.

6. On the question whether the goods seized from the appellants' premises by the officers were liable to confiscation under Section 111 of the Customs Act, the

Department had alleged that no documentary proof whatsoever was produced by the appellants to prove the licit import and possession of the goods and, therefore, Section 111 of the Customs Act read with provisions of the Import and Export Control Act, 1947 were contravened by the party thereby rendering the seized goods liable to confiscation under Section 111 of the Customs Act and, further, rendering the party liable to be penalised under Section 112 of the Act. The party contested the allegation by submitting that, had the seized goods been examined, it would have become clear that the goods were not liable to confiscation. The Commissioner rejected this contention and ordered confiscation of the seized goods with option for redemption on payment of a fine of Rs. 20,000/-. He also imposed a penalty of Rs. 10,000/- on the party.

7. On a perusal of the impugned order, we have found that the necessary requirements of Section 111 of the Customs Act for holding the goods liable to confiscation were not satisfied. Neither was it alleged nor was it found by the adjudicating authority as to which particular clause under Section 111 of the Act was sought to be invoked for confiscating the goods. Moreover, there is no finding in the order of the adjudicating authority as to the foreign origin of the goods. The first and foremost requirement for holding goods to be confiscated under Section 111 is a finding that the goods are of foreign origin.

Such finding is lacking in the impugned order. We are, therefore, unable to sustain the order of confiscation passed by learned Commissioner under Section 111 of the Customs Act. This being so, there is no question of sustaining the penalty imposed under Section 112 of the Act. In the result, the order of confiscation along with imposition of redemption fine in lieu of confiscation and the order of penalty imposed by the adjudicating authority under the provisions of the Customs Act are set aside.

9. The operative part of this order has already been pronounced in the open court on 7-6-2000.