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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-31-1983

Reported in : (1983)LC1031DTri(Delhi)

Judge : B Gujral, Vice-, K Rekhi, V R Devi

Appellant : Bennett, Coleman and Co. Ltd.

Respondent : Collector of Customs

Judgement :

2. Shri D.N. Mehta on behalf of the Appellants stated that the appellants had imported an Electronic Colour Scanner with ancillary equipment which was entitled to the concessional rate of duty under Notification No. 381 dated 30.11.1977. The items in question are similar to the equipment manufactured under the brand name 'VariO Chromograph296' by another firm which has been specifically exempted under the aforesaid Notification, namely, the Notification 381 dated 30.11.77. The Electronic Colour Scanner imported by the appellants and the Chromograph are used for the same purpose i.e. to produce continuous tone for; screen colour separations from transparencies.

3. Shri Mehta further pointed out that the appellants had made an alternative plea before the Appellate Collector of Customs that the Scanner imported by the Appellants should be classified as a process camera and assessed at the concessional rate of duty under Notification No. 112 dt. 1.7.77 at the rate of 40%. The Appellate Collector, however, while rejecting the appeal, had made no

reference to the latter plea of the appellants namely that the Electronic Scanner imported by the appellants should be classified as a process camera and assessed at the concessional rate of duty under Notification No. 112 dated 1.7.77. He, therefore, requested that the order-in-appeal be set aside since it was not a speaking order, inasmuch as It did not give any reasons as to why the Appellate Collector did not extend the concession under Notification No. 112 dated 1.7.77 to the Appellants.

Before us, Shri Mehta made yet one more alternative plea that the goods be assessed under Heading 84.34 of the Customs Tariff. We disallowed this plea because it was made too late and secondly because the appellants could not be allowed to go on shifting their stand at every stage.

4. The Departmental Representative referred to the Notification No. 381 dated 30.11.77 and stated that the concession had been specifically granted only to Vario Chromograph falling under Chapter 90 of the First Schedule to the Customs Tariff, 1975 and could not be extended to the Electronic Scanner imported by the Appellants. He however, could not explain why the Appellate Collector had not dealt with the alternative plea of the appellants, namely, their claim for concession under Notification No. 112, dated 1.7.77.

5. The Bench has considered the arguments of the Appellants and the Departmental Representative very carefully and are of the view that the Appellate Collector should have dealt with the plea of the appellants referred to above, claiming concession under the aforesaid Notification No. 112 dated 1.7.77 and given his findings as to why the appellants are not entitled to such a concession. The Bench therefore, sets aside the order in appeal and remands the case to the Appellate Collector for deciding the appeal afresh by giving a personal hearing to the appellants and after taking into consideration the evidence produced by the appellants for claiming the concessional rate of duty under the aforesaid Notification No. 112 dated 1.7.77. The Appellate Collector will decide the case within 90 days of this Order and the appellants will produce any further evidence in support of their plea to the Appellate Collector within 30 days of this order. The amount of refund, if held to be admissible, should not in any case exceed the

amount originally claimed by the appellants.

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