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Commissioner of Customs Vs. Umang Computers

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-18-2001

Appellant : Commissioner of Customs

Respondent : Umang Computers

Judgement :

1. Umang Computers, the respondent to this appeal imported a consignment of mouse pads i.e. pads which are used along with a computer mouse and claimed classification, both for purposes of import trade control and assessment to duty for Customs tariff under heading 8473.30. The department noted that the goods were made of rubber and concluded that by application of Note 1(a) of Section XVI of the Tariff, the goods would be excluded from that section for classification. They would be rightly classifiable under heading 40.16.

Goods imported under this to the Import Control Trade Policy requires a licence. In the absence of that licence the goods were unauthorised.

The Additional Commissioner, after considering the submission that were made on behalf of the importer, held the good to be classifiable under 40.16 and 40161000.10. He ordered them to be confiscated with an option to redeem on fine and imposed penalty. On appeal from this order, the Commissioner (Appeals) held that the goods were "standard accessories" of a computer, hence classifiable under 8473.30. This is questioned by the department. It is not necessary for us in this appeal to determine whether the mouse pad is or is not an accessory of a computer. Even accepting the claim of the importer that it is, it would still not be

classifiable under heading 84.73. Note 1A to Section 16 (both in the tariff and the Import Policy) excludes certain items under classification under that section. Among these are other articles of a kind used in machinery or mechanical or electrical appliances or for other technical use or unharded vulcanised rubber. Counsel for the respondent accepts that the exclusion applies to the goods. He also does not dispute that in that event the goods would be classifiable under heading 40.16. we therefore accept the classification that the department proposes both for assessment under 40.16 and for Import Trade Policy purpose 4016.1000.10. IT would then follow that the import of the goods was unauthorised. The policy makes it clear that the goods covered by this sub-heading required for their import a licence, which has not been produced.

2. We however take note of the submission of the counsel for the respondent that the issue was not clear and it genuinely believed that the goods were accessories of a computer mouse and therefore of a computer system and so could be freely imported. No use of these articles than with the computer mouse is apparent to us or has been brought to our notice. The importer could therefore have held a bona fide belief that these articles were classifiable as accessories of a computer mouse. (It is to be noted that we have not declined to accept this claim). There was therefore no justification for imposition of penalty, and considerable leniency in the matter or redemption fine is also justified.

3. Therefore while we allow the department's appeal and restore the classification that the Addl. Commissioner has determined, we decline to restore the penalty that he has imposed and fix the fine for redemption of the goods at Rs. 20,000/-.

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