Commissioner of Customs, Mumbai Vs. Ex-thos Electronics Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-22-2002

Reported in : (2002)LC252Tri(Mum.)bai

Judge : S T Gowri

Appellant : Commissioner of Customs, Mumbai

Respondent : Ex-thos Electronics Pvt. Ltd.

Judgement :

1. The question for consideration in this appeal is the eligibility to importation by Ex-Thos Electric Pvt. Ltd., the respondent to this appeal of video games in terms of special import licence that it produced. The goods were eligible for import under this licence under appendix XXXV of handbook of procedures which form part of the policy for the relevant year. Entry 15 of this appendix specifies "electronic games and toys" under customs Heading 9503,20 and 9504.10. Sub-heading 9504,10 of the Tariff reads "Video games of a kind used in the television receiver." The department found on examination the games in question to be self contained with their own screen, find that these were not games of a kind used with a television receiver and concluded that the goods were under cover by the entry. The importer waived issue of written notice. After hearing him, the Dy. Commissioner passed orders holding the licence not to cover the goods, ordered its confiscation with an option to redeem on payment of fine. He also imposed a penalty on the importer. The importer appealed this order to the Commissioner (Appeals). That authority accepted the contention that the goods fell under sub-

heading 10 of Heading 9504, held the licence to be valid for the import of the goods and allowed the appeal and set aside the order of the Dy. Commissioner. Hence, this appeal by the department.

2. I have heard the departmental representative. The representative of the respondent is absent and unrepresented despite notice.

3. The Commissioner has been guided in coming to his conclusion by the contents of the Explanatory Notes to Heading 95.04 of the Harmonised System of Nomenclature (on which the entry in the customs tariff is based). The Notes says at page 1714 of the second edition, 1996 that the heading "includes video games (used with a television receiver or having a self contained screen) and other games of skill or chance with an electronic display." It is not possible to see how the Commissioner (Appeals) concludes that the goods in question fell for classification under sub-heading 10. Sub-heading 10 of the heading is for video games of a kind used with a television receiver. Heading 20,30 and 40 are not relevant to the facts before me. Sub-heading 90 is a residuary sub-heading "Others". From the words of the main heading it is clear that games including table or parlour games are classifiable under this heading. It is clear the video games of a kind used with television receiver would be classifiable under sub-heading 10 and those having a self contained screen under sub-heading 90. All that the note that he has relied upon says is that games of other kind are classifiable under sub-heading 90. The Commissioner's order therefore proceeds on an erroneous understanding of the notes and is clearly contrary to law.

4. The appeal is accordingly allowed and the impugned order set aside.

The order of the Dy. Commissioner is restored.