

P.C. Point Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-09-2002

Reported in : (2002)(144)ELT181TriDel

Judge : K Usha, N T C.N.B.

Appellant : P.C. Point

Respondent : Commissioner of Central Excise,

Judgement :

1. The appeal is at the instance of the assessee. Challenge is against the demand of Rs. 9,035/- towards duty and Rs. 17,375/- as redemption fine along with imposition of penalty of Rs. 1,000/- on the ground that the assessee had been engaged in manufacture of computers contravening the provisions of Rules 9(1), 43, 44, 45, 51 A, 52, 52A, 53, 54, 55, 173B, 173C, 173F, 173Q and 226 of the Central Excise Rules, 1944.

2. The only issue arising for consideration is whether the 7 computers found at the premises of the assessee were assembled by them or whether the assessee had only upgraded old computers. Admittedly, upgradation of old computer would not attract any excise duty. The assessee contended that they purchased old computers and upgraded the same and they are doing the business of job work, training of hardware and software, marketing of computers of various companies and not engaged in the manufacture of computer. In support of its case that they had purchased old computer sale letter dated 9-12-94 from M/s.

Pressman Computers and invoice dated 1-1-98 by M/s. Electronic Data Systems were produced. These documents were/ejected by the assessing authority for the reason that in Paragraph 2 of their statement the assessee had mentioned that all the 7 computers were purchased on different dates in second-hand and used condition. But as per the documents produced the purchase is under two Bills. We do not think that this is a sufficient reason to reject the materials produced by the assessee in support of its contention. Revenue has no case that it had made enquiries either with M/s. Pressman Computers or M/s.

Electronic Data Systems and had come to the conclusion that the sale letter and invoice are bogus. We also find that apart from an allegation that these 7 computers are assembled or manufactured by the assessee there is no evidence available with the Revenue to support the above allegation. Under these circumstances, we are inclined to accept the contention raised by the appellant that the 7 computers, found in the premises of the assessee are not old computers upgraded by them.

We, therefore, set aside the impugned order and allow the appeal.

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