Viacom Electronics Pvt. Ltd. Vs. Cc (Acu)

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SooperKanoon Citation : sooperkanoon.com/28808

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-29-2002

Reported in : (2003)(85)ECC79

Judge : S T G.R., P Bajaj

Appellant : Viacom Electronics Pvt. Ltd.

Respondent : Cc (Acu)

Judgement :

1. This appeal has been filed by the appellants against the impugned order-in-original dated 5.12.2001 passed by the Commissioner of Customs.

2. The facts are not much in dispute. The appellants through the Customs House Agent, M/s, Challenge Cargo Services, filed bill of entry for clearance of 5000 sets of 'Electronic Components for Colour Television Model 2111', at a declared value of Rs. 80,56,026. The goods were supplied by M/s. TCL. Marketing Ltd., Hong Kong. The goods were declared in the Bill of Entry as sets, but the description of the goods was found ambiguous as parts numbers and technical specifications essential to ascertain the value of electronic components were not declared. However, the appellants furnished detailed invoices containing list of different components and their individual value. On scrutiny of the invoices, it revealed that the components declared as sets consisted of components of different specifications. It also revealed that the appellants had imported all items required for the manufacture of Colour Television except Picture Tube and Cabinet. It

appeared that they had, in fact, imported complete TV kits. The supplier also appeared to be related person as defined under Rule 2(2) of the Customs Valuation Rules, 1988. The value of the goods was re-determined in terms of Rules 5 to 8 of the Customs Valuation Rules, 1988. The goods were found to be classifiable under CTH 852812 and CETH 8528.00 and liable to pay duty accordingly. The show cause notice was accordingly served on the appellants, but it remained undelivered to them. The Commissioner thereafter proceeded at their back and passed the impugned order.

3. The learned counsel has raised two-fold contentions; firstly, that no proper and effective opportunity was afforded to the appellants and there had been breach of rules of natural justice; and secondly the dispute regarding the description of the goods, their classification and the duty chargeable thereon, deserves to be decided in accordance with the Larger Bench decision of the Tribunal in the case of M/s. Sony India Ltd. v. CC (ICD), New Delhi, 2002 (82) ECC 436 (Tri-LB). Final Order No. 237/2002-B dated 28.5.2002.

4. On the other hand, the learned JDR, has only reiterated the correctness of the impugned order.

5. We have heard both sides. The perusal of the impugned order no doubt shows that the show cause notice was sent to the appellants at their given address, but remained undelivered. The notice was issued to them twice; firstly on 23.10.2001 and secondly on 27.10.2001. No reply to the show cause notice was furnished by the appellants in spite of issuing reminders. But, still we find that in the interest of justice, especially when the appellants have shown their intention to file the reply to the show cause notice and contest the matter, one opportunity deserves to be afforded to them for presenting their defence. Besides this, the matter regarding the description of the goods, their classification and duty payable thereon, in our view, deserves to be re-adjudicated in the light of the ratio of the law laid down by the Larger Bench of this Tribunal in the case of Sony India Ltd., (supra).

This decision has been rendered by the Larger Bench after the passing of the impugned order.

6. In view of the discussion made above, the impugned order is set aside and the matter is sent back to the adjudicating authority for deciding the case afresh in accordance with law after affording a reasonable opportunity of hearing to both the sides. The appellants will cooperate and put up appearance before the adjudicating authority.