Compusoft Vs. Commissioner of C. Ex.

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SooperKanoon Citation : sooperkanoon.com/29299

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-11-2002

Reported in : (2003)(154)ELT241Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Compusoft

Respondent : Commissioner of C. Ex.

Judgement :

1. The appeals are against the order of the Commissioner demanding duty on what is found to be computer system manufactured by Compusoft and National Control Systems, and imposing penalties on these two firms and the partners Manoj Shah and Sushila Shah.

2. The counsel for the appellant limits his arguments to imposition of penalties, apart from the contention that penalties could not be simultane ously imposed on a firm and its partner/ he raises the point that the appel lants' plea that putting together various units of a data processing system did not amount to manufacture. He points out that two different Benches of this Tribunal has come to two diametrically opposing conclusion in the matter. The Chennai Bench of the Tribunal in its decision in Universal Music System and Anr. v. CCE [1999 (107) E.L.T. 505 (T) = 1998 (79) ECR 880] held that the activity does not amount to manufacture. The Bench of the Tribunal at Delhi in its decision in Computer Aid v. CCE - 2001 (130) E.L.T. 68/ in a latter deci sion without taking note of the earlier

decision has concluded and that too partly on an admission made by the appellant that, the process was manufac ture.

3. The departmental representative reiterates the finding of the Commissioner.

4. Since we are only concerned with the penalties imposed on the appellants, we refrain from expressing any view as to whether the activity undertaken by Compusoft and National Control Systems amounted to manufacture or not. So far as the penalty is concerned, we have seen the two decisions that have been cited before us, one holding that the activity amounts to manufacture and other holding that it does not. In the light of the fact that two Benches of the Tribunal themselves have expressed diametrically opposite view, and also taking into consideration that penalty cannot be simultaneously imposed on the partnership firm and its partners, we set aside the penalties imposed on the appellants.