

**Award Electronics Vs. Cc**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

**Decided On :** Dec-11-2002

**Reported in :** (2003)(85)ECC737

**Judge :** S Peeran, R K Jeet

**Appellant :** Award Electronics

**Respondent :** Cc

**Judgement :**

1. This appeal is directed against the Order-in-Appeal No. C. Cus.

524/2002 dated 7.11.2002, by which the learned Commissioner (Appeals) has upheld the order of the lower authority in which the Additional Commissioner of Customs, Air Cargo Complex, Chennai has ordered confiscation of the impugned goods as Digital Video Cameras under CTH 8525 in terms of Rule 2(a) of the General Rules for the interpretations of the Import Schedule; determination of the value of the Sony digital video cameras at the unit rate of US \$ 261.52 per set (FOB), US \$ 273.92 per set (FOB), 313.19 US \$ per set (FOB) for CCD TRV 107E, CCD TRV 408E and DCR TRV 140E respectively under Rule 5 of the Customs Valuation Rules, 1988; determination of value of the Sony digital video cameras at the unit of US \$ 261,52 (FOB), US \$ 360.00 (FOB), US \$ 399.63 (FOB), US \$ 395.89 (FOB) and US \$ 614.79 (FOB) for the model CCD TRV 208E, DCR TRV 238E, DCR TRV 240E, DCR TRV 340E and DCR TRV 730E respectively under Rule 8 of CVR' 88 and confiscated the goods covered under

the Bills of Entry No. 71272 dated 21.6.2002 and 426538 dated 26.6.2002 under Section 111(m) of the Customs Act, 1962. However, the importer was given an option to redeem the same on payment of fine of Rs. 1,00,000 under Section 125 of the Customs Act, 1962. They were also imposed a penalty of Rs. 4,84,000 under Section 114 (A) of the Customs Act, 1962 by the Order-in-Original which was subsequently changed to Section 112A of the Customs Act for imposition of penalty, by learned Commissioner (Appeals).

2. Ld. Advocate Shri A.K. Jayaraj has brought to our notice the judgment of the Larger Bench of Sony India Ltd. v. CC, ISD, New Delhi, 2002 (82) ECC 436 (T-LB) wherein it has been held that imports under different consignments cannot be clubbed together for the purpose of assessment under the Customs Act. It was also observed that a complete assembly operation involved in the manufacture of CTV is complex and not a simple assembly operation to bring the imports under Interpretative Rule 2(a). Ld. Advocate also submits that the Larger Bench, while deciding the case has taken into consideration the judgment rendered by the Apex Court in the case of Tarachand Gupta, AIR 1971 SC 1158, UOI v. Tarachand Gupta & Bros., 1983 (13) ELT 1456 and the judgment of Sharp Business Machine, 1990 (30) ECC 27 (SC) has been distinguished by the Larger Bench. Ld. Advocate also brought to our notice the judgment rendered by the West Zonal Bench, Mumbai in the matter of GEBBS India Ltd. v. CC, Mumbai, 2002 (146) ELT 223 (T-Mum) wherein also it has been held that components of video display unit of computers, imported before Rule 2(a) of General Interpretative Rule of Tariff became part of import policy and even if all or major components of the unit imported, it Cannot be said complete unit was imported, requiring licence. The West Zonal Bench, Mumbai also set aside the confiscation of the components and the appeal of M/s. Gebbs India Ltd. was allowed. He, therefore, submitted that the value of complete sets i.e. video cameras and Handicam video camera of Sony brand cannot be taken for the parts. Ld. Advocate also stated that since there is no mis-declaration, no penalty can be imposed on them neither under Section 114A nor under 112A of the Customs Act.

3. Ld. DR Shri A. Jayachandran submits that M/s. Award Electronics, appellant importer herein, have imported the sub-assembly of Sony Digital Video Camera

vide Bill of Entry No. 426538 dated 26.6.2002 and 427119 dated 27.6.2002 in the guise of parts of video camera to evade payment of duty by way of undervaluation and availing the notification benefit wrongly. He, further, submitted that the timely detection of mis-declaration by SIIB Air Cargo Complex, Chennai led to the issue of show cause notice and after going through the records carefully, the Additional Commissioner, Air Cargo Complex had held the impugned goods as "Digital Video Camera" under the Customs Tariff Heading 8525 by invoking the provisions of Rule 2(a) of General Rules for the interpretations of the Import Schedule. He has rightly taken the value of Sony digital video camera, because all parts, if taken together, can form Sony digital video camera and therefore, the valuation adopted by the Addl. Commissioner under Rule 8 of the CVR 88 is required to be sustained. The redemption fine of Rs. 1 lac and penalty of Rs. 4,84,000 imposed under Section 112A and the impugned order is also required to be sustained because wrong quoting of Section will not vitiate the proceedings. He also submitted that the learned Commissioner (Appeals) has, in his order, categorically stated that the investigation showed that this sub-assemblies were ready to reassemble into specific models of Sony Handcam digital camera.

4. We have carefully considered the submissions made by the learned Advocate as well as by learned DR, and after going through the judgment rendered by the Larger Bench in the case of Sony India Ltd. v. CC, ICD, New Delhi (supra) and the judgments rendered by the WZB in the case of Gebbs India Ltd. v. CC, Mumbai (supra), we are of the view that Revenue cannot take the value of the full video camera and since there is no mis-declaration, as the parts of sub-assembly were fully disclosed in the respective Bills of Entry, the goods cannot be confiscated under Section 111(m) of the Customs Act. We, therefore, set aside the order of confiscation as well as order of enhancing the value and also we do not sustain the view taken by the learned Commissioner that Rule 2(a) of General Interpretative Rule of the Tariff is applicable to such cases. We, therefore, hold that even if all or major components of unit are imported, it cannot be said that complete units were imported.

Therefore, the order passed by both the lower authorities below is not sustainable and requires to be set aside. We, therefore, allow the appeal and grant

consequential relief, if any, as per law, Ordered accordingly.

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