

L.M.L. Ltd. Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-31-2003

Reported in : (2003)(153)ELT703TriDel

Judge : S Kang, a T V.K.

Appellant : L.M.L. Ltd.

Respondent : Commissioner of Customs

Judgement :

1. In this Appeal filed by M/s. LML Ltd., the issue involved is whether CD ROM containing images of drawing and designs of engineering goods is classifiable under Heading 49.06 of the first schedule to the Customs Tariff Act, as drawings for engineering purposes or alternatively under Heading 49.11 as other printed matter as claimed by them or under sub-heading 8524.39 of the Customs Tariff and 8524.90 of the Central Excise Tariff as confirmed by the Commissioner (Appeals) under the impugned Order.

2. Shri R. Santhanam, learned Advocate, submitted that the CD ROM imported by the Appellants contained drawings and designs of engineering goods and documents of title of the drawing and designs representating the right to use information and technology software; that in the case of Associated Cement Company Ltd. v. Commissioner of Customs - 2001 (128) E.L.T. 21 (S.C), the Apex Court has held that information, documents, drawings and designs etc., contained in the book form as manuals and also those diskettes would be regarded as goods

and the manner in which the information is conveyed on paper or through diskettes is immaterial; that the Supreme Court had referred to Heading Nos. 49.06 and 49.11 for considering the drawings, plans and manuals as goods; that therefore, drawings and designs would fall under 49.06 of the Customs Tariff. He also relied upon the decision of the Supreme Court in the case of Commissioner of Customs, New Delhi v. Parasrampuriah Synthetics Ltd. - 2001 (133) E.L.T. 9 (S.C.), wherein the drawings and designs and plans were extended the benefit of Notification No. 25/95-Cus., dated 16-3-95 under S. No. 15 which provided 10% duty ad valorem in respect of plans, drawings and designs falling under Heading 49.06 and 49.11. He contended that it is thus evident from the judgment of the Supreme Court that drawing and designs fall under either Heading No. 49.06 or alternatively under 49.11.

Finally, he submitted that, in any event, even assuming without admitting that the goods imported are classifiable under Heading 85.24, the same would qualify for nil rate of duty under Heading 285 of Notification No. 17/2001 instead of 267 as software; that in any case for the purpose of countervailing duty the product is to be classified under 49.01 of the Central Excise Tariff as it covers plans, drawings and designs. He also relied upon the decision in LML Ltd. v. Collector of Customs, Mumbai, Final Order No. 396/2000-B, dated 10-3-2000 [2001 (130) E.L.T. 615 (T)] in which "advanced designer/mould designer package III" was recorded as software and the benefit of S. No. 173 of Notification No. 11/97 was extended. He also referred to Note 2 to Chapter 49 both in the Customs Tariff and Central Excise Tariff which provides that for the purpose of Chapter 49, the term "printed" also means reproduced by means of a duplicating machine, produced under the control of a computer, embossed, photographed, photocopied, thermocopied or typewritten; that thus the matter by way of drawings and designs under CD ROM must be construed as printed.

3. Countering the submissions, Shri Vikas Kumar, learned Senior Departmental Representative, submitted that the product in question is admittedly CD ROM containing drawings, plans and designs for engineering purposes; that such CD ROM will not be covered by the Chapter Note 2 to Chapter 49 and the definition of 'printed' will not apply to the CD ROM; that the phrase "produced under the control

of a computer" referred to E-Mail etc. and not to CD ROM; that there is a specific Heading in Chapter 85 which covers the impugned product; that it is settled law that specific Heading has to be preferred; that as per Explanatory Notes of HSN Heading 85.24 covers recorded discs, tapes, wires etc. He, further, submitted that the decision in the case of ACC Ltd. is not applicable as in that matter the contention of the Appellants were that the drawings imported by them were not goods; that while dealing with this question the Supreme Court referred to Heading 49.06 and 49.11 which cover plans and drawings for engineering, industrial, commercial etc. purposes. He, further, submitted that Heading 49.06 covers industrial plans and drawings only if consisting of originals drawn by hand; handwritten texts; photographic reproduction on sensitized paper and carbon copies of foregoing and CD ROM is none of the same and as such it cannot be classified under Heading 49.06; that similarly, the impugned product will not be covered under 49.11 as it applies only to printed matter including printed, pictorial and photographs.

4. We have considered the submissions of both the sides. It is not in dispute that the product imported by the Appellants is CD ROM containing images of drawings and designs of engineering goods. Rival Headings read as under :49.06 Plans and drawings for architectural, engineering, industrial, commercial, topographical or similar purposes, being originals drawn by hand; handwritten texts; photographic reproduction on sensitized paper and carbon copies of the foregoing 49.11 Other printed matter, including printed pictures and photographs. 8524 Records, tapes and other recorded media for sound or other similarly recorded phenomena, including matrices and masters for the production of records, but excluding products of Chapter 37.

-- Disc for laser reading system, 8524.31 -- For reproducing phenomena other than sound or image. 8524.32 -- For reproducing sound only. 8524.39 -- Other.

5. Explanatory Notes of HSN mentions that Heading 49.06 covers industrial plans and drawings, the purpose of which generally is to indicate the position and relation of parts or features of building, machinery or other constructions. The Explanatory Notes, further, mentions that "it should be noted that such products

fall in the Heading only if consisting of originals drawn or written by hand, or of photographic reproductions on sensitized paper or of carbon copies of such originals." It is not the case of the Appellants that the drawings and designs are either of the forms mentioned in Heading 49.06 and as explained in the Explanatory Notes of HSN Notes merely because CD ROM contains drawing and designs, it would not fall under Heading 49.06. We also agree with the learned Senior Departmental Representative that definition of 'printed' as given in Note 2 to Chapter 49 will not cover within its purview the CD ROM and as it is not a printed matter Heading 49.11 is not applicable. The Explanatory Notes of HSN below Heading 49.11 clearly mentions that "cards incorporating a magnetic stripe (Heading 85.23 or 85.24) is excluded from Heading 49.11." The product is specifically covered by sub-heading 85.24.39. The decision in the case of Parasrampuriah Synthetic Ltd. (supra) is not applicable as the facts are different inasmuch as in the said matter, the respondents had imported printed drawings, designs and plans which were contended by them to be printed books.

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