Zuhyde Intelligent Computer Vs. C.C.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Aug-08-2003

Reported in : (2003)LC967Tri(Bang.)alore

Judge : G B Deva, S T S.S.

Appellant : Zuhyde Intelligent Computer

Respondent : C.C.

Judgement :

1. The appellant is a Small Scale Unit engaged in the development of software for computers and was setup by a Technocrat NRI on his return from America.

2. The Department of Electronics, Ministry of Science and Technology, Government of India (hereinafter referred to as DoE) had issued Concessional Customs Duty Certificate (hereinafter referred to as CCDC) having No. 17(163)/Comp/88, dated 28-3-89 and this CCDC specifically stated "M/s. Zuhyde Intelligent Computer Products Pvt. Ltd. are now importing items as covered under the import licence and as per the list, duly endorsed, to this certificate, for the implementation of the project and it is certified that these items are eligible for assessment of customs duty under Notification No. 506/86-Cus., dated 24-12-86 as amended".

3. Imports were made on the basis of an import licence and CCDC issued by DoE at Cochin Port. The appellants vide Bill of Entry No.SGI/322/89, dated 3-8-89 paid the duty of Rs. 1,21,419/- and cleared the goods. Subsequently, they received a

show cause notice dated 29-1-90 proposing to levy additional amount of Rs. 2,19,706/- alleged to be short-levied on certain items cleared. The Assistant Commissioner vide his letter dated 10-4-90 confirmed the demand. An appeal was filed to Commissioner (Appeals) who ordered a pre-deposit. The matter was taken up to the Hon'ble High Court of Kerala, who issued an interim stay and were thereafter pleased to dispose off the petition directing the appellant to pre-deposit the amounts. Thereafter, the Commissioner (Appeals) vide impugned order has confirmed the order of the lower authority and rejected the appeal. Hence, the present appeal.

4. After hearing both sides and considering the material, it is found :- (a) Relevant portion of Notification No. 506/86-Cus., dated 24-12-86 as amended, reads as follows :- ".....hereby exempts computer equipments falling under Heading No. 84.71. The accompanying software of such computer equipments falling under Heading No. 85.24 and the startup spares of such computer equipments falling under Heading No. 84.73 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India....." The notification is also subject to the condition that an officer not lower in rank than a Joint Director in the Department of Electronics of the Government of India is satisfied that the computer equipments are imported under the policy of computer software export, software development announced by the Government of India in the DoE in 1987 and recommends the grant of the above exemption. A reading of this Notification clearly exhibits that what is exempted are : (ii) The accompanying software of such computer equipments falling under Heading 85.24.

(iii) Startup spares of such computer equipments falling under Heading 84.73.

Subject to the condition that the requested certificate for the said goods is obtained from the DoE. Goods falling under any other headings than the ones mentioned in the notification, obviously, do not qualify for the exemption notification.

(b) The goods impugned and their classification, in the present proceedings, are as follows :- (c) None of the impugned goods are classified under 84.71, 85.24 and/or 84.73 of the First Schedule to the Customs Tariff Act and there are no grounds taken, as regards their classification, to be not correctly arrived at by the lower authorities. The ground taken before us is only that the goods imported are certified to be eligible and DoE has satisfied the use of these equipments imported to be essential for the production of the software by the appellant's company and that the said goods were being used as computer peripherals and thus would be entitled. This argument, placed would not entitle eligibility to this notification. It is well-settled law, that applicability of a notification and entitlement of the benefits therein have to be proved by the persons claiming the same. This notification only exempts goods falling under three Headings 84.71, 84.73 and 85.24 and not the headings of the First Schedule to Customs Tariff Act, as the impugned goods as classified by the lower authorities do not fall in the specified headings eligible to the exemption. The intention and/or use of the subject goods, as computer peripherals, as is being submitted before us, cannot entitle the benefit of this exemption. Similarly, even if DoE has approved the use of such equipments, that ipso facto will not entitle the benefit of the exemption, if the items per se do not falls under the wordings of Computer equipments falling under Heading 84.71, spares of such equipments falling under Heading 84.73 and other software falling under Heading 85.24. Therefore, the appeal filed before us is bereft of any merits for our consideration and is required to be dismissed.