

Rishi Electronics Ltd. Vs. Cc

Rishi Electronics Ltd. Vs. Cc

SooperKanoon Citation : sooperkanoon.com/34779

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-31-2004

Reported in : (2004)(96)ECC162

Judge : K Usha, N T C.N.B.

Appellant : Rishi Electronics Ltd.

Respondent : Cc

Judgement :

1. Under Final Order No. 919-920/2000-A dated 16.11,2000, this Tribunal allowed Appeals No. C/288-289/2000-A filed by M/s. Rishi Electronics Ltd. against Order-in-Original No. 22/2000 dated 16.2.2000 passed by Commissioner of Customs, Calcutta. Subsequently, a ROM (C/93/2001-A) was filed by Revenue submitting, inter-alia, that the Tribunal had not considered the liability to confiscation of certain items under Section 111 (d) of the Customs Act. Tribunal passed Miscellaneous Order No. 61 /2001-A dated 14.9.2001 allowing the ROM in order to consider that issue.

2. The issue of confiscation under Section 111 (d) is being raised in respect of items like PCBs, Transformer, Transistors, Capacitors, Diodes, Ceramic Capacitors, Time Kits and Cables. Revenue's contention is that these items required specific import licence and since the appellant had not produced such a licence, the adjudicating authority was justified in confiscating these goods under Section 111 (d) and imposing fine and penalty. The relevant portion of the

impugned order on this issue is as under: "(ii) As regards the case covered by Order-in-Original No. 6/92 dated 18.2.92, I order confiscation of VCR components in question on account of under-valuation to the extent of Rs. 2,37,515, ITC violation in respect of the components valued Rs. 2.83 lakhs, and duty evasion to the extent of Rs. 3.5 under Section 111(m) of the Customs Act, 1962 and allow redemption thereof on payment of a fine of Rs. 1,00,000 only.

I impose a personal penalty of Rs. 50,000 only on the importer under Section 112(a) of the Customs Act, 1962." 3. We have perused the records and considered the submissions made by both sides. We note that the main charge was of importing VCRs in SKD form, after misdeclaring them as components and parts and under-valuation of those items. This issue remains decided in favour of the importer under our Final Order No. 919-920/2000-A dated 16.11.2000.

The issue raised in the ROM covers only certain electronic components like PCB, diodes, etc. Their value has been fixed at Rs. 2.83. The submission of the appellant importer in regard to these items is that they are a manufacturer of electronic goods like VCRs and that the items in question were imported by them for manufacture of finished goods in India. Appellants have emphasised that as Actual User (Industrial) they were entitled to import these items under Import Export Policy (1985-88). It is also pointed out that they had been issued import licence for the import of prohibited items as those items were required as components/parts. The contention being raised is that, under Import Export Policy, the appellants were at liberty to import the goods in question either under OGL or under licences issued. The appellant has also produced Central Excise registration and other documents in support of their submission that they were Actual User (Industrial). As against this, the submission of the learned SDR is that since the specific imports in question were not covered by a valid import licence, confiscation and imposition of penalty were justified.

4. We find merit in the appellant's case. There is no dispute that the items in question were required for manufacture of VCRs. In fact, the case originally made was that full VCR was being imported in the guise of VCR parts. Import Policy allowed the import of component for actual industrial users. In the case of

restricted and prohibited items, import licences were being issued for such industrial users. In fact, for the earlier period, the appellants had been granted such licence.

In these circumstances, we are of the opinion that confiscation of the said items and imposition of penalty were not warranted. We, therefore, amend our Final Order No. 919-920/2000-A dated 16.11.2000 so as to allow the appeal on this issue also.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com