

Adline Systems Vs. Commissioner of Customs

Adline Systems Vs. Commissioner of Customs

SooperKanoon Citation : sooperkanoon.com/35524

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-07-2004

Reported in : (2004)(171)ELT18TriDel

Judge : S Kang, a T V.K.

Appellant : Adline Systems

Respondent : Commissioner of Customs

Judgement :

1. Appellants filed this appeal against the order-in-appeal passed by the Commissioner of Customs (Appeals).

(ii) 5 pieces of hydra PAC 2000/XP Docking Kit with connecting cable, (iii) 20 pieces of hydra PAC 2K/XP multimedia kit with connecting cable, and 3. Appellants filed two bills of entry claiming classification of hydra PAC mentioned at Sl. Nos. 1 to 3 above under Customs Tariff heading 8473.10. In respect of software CD appellants claimed classification under heading 85.24 of the Customs Tariff and claimed benefit of Notification No. 21/2002-Cus., dated 1-3-2002. The adjudicating authority classified the software CD under heading 8473.30 of the Customs Tariff with hardware. Appellant filed appeal. The same was dismissed.

4. The contention of the appellants is that software CDs are only software locks which prevent the same from piracy and these are not parts of the software sets which are classified by the appellants under heading 8473.30 of the Customs

Tariff. The software CD is classifiable under heading 85.24 of the Customs Tariff.

5. The contention of the appellants is that if software is stored on the hard disk drive then it is to be classified as software though hard disk itself is not a software. The appellants relied upon the decision of the Hon'ble Supreme Court in the case of Sprint R.P.G. India Ltd, v.CC-I, Delhi, reported in 2000 (116) E.L.T. 6 (S.C.). The contention of the appellants is that as the software CDs are classifiable under heading 85.24 of the Customs Tariff, therefore, are entitled for the exemption provided under Notification No. 21/2002-Cus., dated 1-3-2002 at serial No. 157. The notification provides Nil customs duty in respect of the information and technology software.

6. The contention of the Revenue is that the appellants made import of hardware along with these CDs in question. The Revenue relied upon the certificate issued by the exporter which shows that the appellants made import of Hydra PAC 2000 package which consists of hardware as well as software. Hydra PAC 2000/XP is kit including hardware components that allow the users to connect and run up to 8 additional stations and this hydra PAC kit works automatically together with hydra PAC software.

Revenue also relied upon Chapter Note 6 of Chapter 85 of the Customs Tariff to submit that records, tapes and other media of heading No.85.23 remain classified in those headings, when they are presented with the apparatus for which they are intended and this Note does not apply to such media when they are presented with articles other than apparatus for which they are intended.

7. We find that in this case the dispute is of classification and benefit of notification to 250 pieces of software CD. The appellants claimed classification under heading 85.24 of the Customs Tariff read with serial No. 157 of the table appended to the notification No.21/2002-Cus., dated 1-3-2002. Revenue classified the goods under heading 8473.30 along with hardware imported by the appellants. We find that invoices covering all the goods including software CD show that the appellants made imported of hydra PAC 2000/XP docking kits with parts and accessories. However, the appellants filed two bills of entry claiming different classification in respect of the hardware and the appellants claimed classification under heading

8473.10, whereas in respect of the software CD, a different classification was claimed. The Commissioner (Appeals) examined the goods and gave specific finding that no software locks/software protection locks or hardware locks were found. The Commissioner (Appeals) also noted the description of the goods from the website of the manufacturer which provides that the goods in question are a kit containing hardware and software components that allow users to connect and run up to 8 additional stations directly from the existing Personal Computer. In these circumstances, we find no merits in the argument of the appellants that software is in respect of software protection lock which prevents piracy.

8. Further we find that the Commissioner (Appeals) in the impugned order after examining the goods gave a specific finding of facts that the goods in question are sets of 7 items including hardware and software and we find no infirmity in the above findings of the Commissioner (Appeals) as the information derived from the website of the manufacturer describes the goods in question i.e. kit containing hardware and software components.

9. The appellants also relied upon the Hon'ble Supreme Court's decision in the case of Sprint R.P.G. India Ltd. v. CC-I, Delhi (supra). In that case, importer made import of software which were loaded on a hard disk. The Revenue wanted to classify the goods as hardware. In this situation, the Hon'ble Supreme Court held that software remains software even though it is stored on a hard disk drive. In the present case, the facts are different. In the present case the appellants made import of complete kits including software. Therefore, we find no merits in the argument of the appellants that the goods in question are not classifiable under heading 8473.30 of the Customs Tariff.

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