

Commissioner of Customs Vs. Raffles Software (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : May-05-2005

Reported in : (2005)(190)ELT409Tri(Bang.)

Judge : S Peeran, J T T.K.

Appellant : Commissioner of Customs

Respondent : Raffles Software (P) Ltd.

Judgement :

1. This appeal arises from OIA No. 31/2000-Cus., dated 14-8-2000 denying the benefit of exemption under Notification No. 140/91-Cus., dated 22-10-91 in respect of the following goods : The appellants have taken a contention that these goods are required for direct involvement of goods in Development Software and they are required for setting up of software technology parks and eligible for the benefit of the notification. The Commissioner (Appeals) in the impugned order has granted the benefit of notification holding them as capital goods, in terms of Notification No. 140/91-Cus. dated 22-10-91.

He has also held that the certificate issued by the concerned Chief Executive of the Software Technology Park Society set up by the Government of India, Department of Electronics is to be considered as an impartial and expert expression of view and they should be accepted in the absence of any evidence to show that it has been issued on bias.

He has relied on the Tribunal's ruling in the case of Garware Wall Ropes Ltd. v. CCE, .

2. Revenue has contested these findings, by submitting that the items are not capital goods and are not eligible for the benefit of the said notification and that they are not required for developing of software and export.

3. Ld. DR argued on the basis of grounds made out in the appeal, while Id. Counsel submitted that this very issue has been considered by this Bench in the case of Wipro Ltd. v. CCE, Bangalore vide Final Order Nos.

1024-1030/2004 dated 26-5-2004 2004 (173) E.L.T. 207 (Tri.-Bang.) and has upheld the prayer for grant of the benefit of Notification in question. He produces a copy of the said order.

4. On a careful consideration of the submissions, we find that the assessee has been using the capital goods for the purpose of development of software for export. The Commissioner (Appeals) has examined the issue in great detail and has found that they are essential for the purpose of development of software and has relied on the certificate issued by the Government agency, viz. Chief Executive of the Software Technology Park Society set up by Government of India, Department of Electronics. There is no evidence available for discarding this certificate. Further more, we find that this very issue was considered in the case of Wipro Ltd. (supra) and the Tribunal in para 5 has granted the benefit. The said paragraph 5 is reproduced herein below : "5. We have carefully considered the submissions made by both the sides. We find that the goods exempted under Notification No. 140/91-Cus. or 96/93-Cus. are required to be used in connection with manufacture or development of software for export. For development of software frequent meetings of the group developing the software are required with the client for whom the software is developed.

During these meetings, they get the inputs required for development of the software and finally the developed software is required to be tested. Therefore, for the process of development of software, Video Conferencing Equipment desk top video camera LCD projector EPABX systems are necessary for consultations and

discussions. The Surveillance and security/Access control system are also necessary to protect data used for development of software. Therefore, surveillance system security access control system are also essential in development of the software. Appellants are therefore entitled for exemption on these mentioned in Para 2 above." 5. Respectfully following the ratio of the above order, we confirm the findings recorded by the Commissioner (Appeals) by rejecting this appeal.

(Operative portion of this Order was pronounced in open Court on conclusion of hearing)

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