

S.M. Telesys Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-13-2005

Reported in : (2006)(109)ECC581

Judge : S Kang, Vice, S T T.V.

Appellant : S.M. Telesys Ltd.

Respondent : C.C.E.

Judgement :

1. Heard both side. The appellant filed these appeals against the common adjudication order.

2. The appellant made import of pager and appellants are also manufacturing pagers. A SCN was issued to the appellant in respect of pager imported by them on the ground that the imported pagers are being brought to the factory and thereafter being programmed. Hence the process undertaken by the appellant amounts to manufacture in view of the provisions of Note 6 of Section XVI of Central Excise Tariff Act.

1985.

3. The contention of the appellant is that they are importing complete pagers and no programming is done in their factory. There are only repacking and relabelling the imported pager and this activity does not amount to manufacture. The contention is that revenue is only relying upon the statement of Shri S.K. Kaul,

General Manager of the appellant whereby he submitted that the imported pagers are brought into the factory for programming labelling and packing of stickers. The contention is that the General Manager retracted his statement in reply to SCN whereby he submitted that the statement was recorded under coercion. The appellants are also relied upon the decision of Hon'ble Bombay High Court in the case of State of Maharashtra v. Fazal Mohd.

Tandcl . The contention is that the Hon'ble High Court held that the retraction is valid even after six years which was done at the first available opportunity. The appellant also submitted that the process undertaken by them does not amount to manufacture even in view of the provisions of Chapter Note. The appellant also relied upon the technical opinion produced by them before the adjudicating authority whereby it is stated that the imported paper cannot be programmed and they also submitted that there is no facility in their factory to programme the imported papers.

4. The contention of the revenue is that the General Manager in his statement submitted that imported pagers are brought into the factory for programming, labeling and packing of stickers. He also submitted that in his specific query by the revenue officer, he admitted that by imported pagers were brought into the factory for further processing.

The contention is that the appellant pleaded before the Inspecting Officer that the imported pagers are being brought to the trading premises and on verification, it was found that premises was of Shri S.K. Kaul, General Manager who of appellant firm. The revenue relied upon the decision of Hon'ble Supreme Court in the case of Surjit Singh Chabra v. UOI . The contention is that as they had imported the pagers which are to be programmed and after programming the pagers are being activated as per the Note 6 of Section XVI of Central Excise Act, 1985 "conversion of an article which is incomplete or unfinished but having the essential character of the complete or finished article including 'blank' that is an article, not ready for use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into the finished article or part, into complete of finished article shall amount to manufacture. The

contention is that the imported pagers cannot be used as such without programming and after programming in the factory as admitted by the General Manager, they can be used as pagers, therefore, this activity amount to manufacture.

5. In this case the contention of the appellant is that they had imported complete pagers and only repacking and relabelling is done after import. We find that the General Manager Shri S.K. Kaul gave a detailed statement on 8.10.99 to the effect that the imported pagers are brought into the factory for programming labelling or packing for stickers. The statement was retracted only on 24.9.02 in reply to SCN on the ground that the statement was made under coercion. We have gone through the statement whereby he has given the detailed manufacturing process regarding the pagers which are being manufactured by them and he has also mentioned that the pagers are being imported from Hong Kong and the same were being brought into the factory for programming. The retraction is after six years that on the ground of coercion will not help the appellant as Shri S.K. Kaul is working as General Manager and he knows what the processes are being undertaken on the imported pagers in the factory. The contention of the appellant is also that the pagers are never taken to factory but they are being taken to the premises of Shri S.K. Kaul, General Manager. As per the provision of Chapter Note 6 of Chapter XVI, as the appellants are programming the pagers and without programming they are not used as pagers, we find no infirmity in the impugned order where the demand is confirmed. Taking into facts and circumstances of the case, the penalty is reduced to Rs. 5 lakhs.

In respect of personal penalties, there is no evidence on record which shows omission or commission with intent to evade payment of duty on the part of the Director as well as on the G.M. Therefore, penalties imposed on the Director and G.M. are set aside and appeals are disposed of as indicated above.

6. The Revenue also tiled an appeal against the impugned order whereby the value of clearance was treated as cum-duty price. We find that this issue is already settled by the Hon'ble Supreme Court in the case of Maruti Udyog Ltd. - 2000 (141) ELT 3. In view of the above, we find no merit in the impugned order of

the revenue, the same is dismissed.

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