

Scan Electronics Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-25-1988

Reported in : (1988)(16)ECC124

Appellant : Scan Electronics

Respondent : Collector of Customs

Judgement :

1. One of the main points of controversy in the appeal referred to the Larger Bench now constituted relates to classification of electronic colour scanner Model Magnascan 510. The appellants claim its assessment under Heading 84.35 CTA 1975 whereas the department contends that the classification falls under Heading 90.10 ibid. A Bench of this Tribunal in its judgment in the case of UNITED OFFSET PROCESS PVT. LTD. [1985 (19) ELT 242 - Tribunal] had held that the colour scanner falls under Tariff Heading 90.10. Normal Bench dealing with the appeal of the appellants had some reservations in following the aforesaid judgment of the Tribunal. Hence the appeal referred to the Larger Bench.

2. Another point involved in this present appeal is about the valuation of the goods in terms of Section 14 of the Customs Act.

3. The Larger Bench heard the matter at length on 28th & 29th September, 1987 and reserved their judgment. While the Bench was deliberating upon the judgment to be recorded, the learned representative of the department made the misc. application aforesaid with which he enclosed copies of the Bombay High Court

judgment (single judge) dated 31.7.87 in writ petition No. 439 of 1981 (Metal Box India Ltd. v. UOI) on customs classification of Vario Chromograph Machine, Model C-296. It was stated before us that this machine was also a colour scanner. The Bombay High Court appointed a technical expert. On receipt of the report of the technical expert, the High Court decided the matter in the following terms :- "7. Accordingly, Mr. Deepak Agarwal has sent his report dated July 28, 1987 to this Court which was taken on file by me yesterday. In this report he has categorically stated, after making thorough inspection of the machine and after operating, that the Vario Chromograph Machine installed at the factory of the petitioners performs the same functions technically and commercially as that of a precision process camera. I accept this report and on the basis of this I must necessarily hold that the petitioners were entitled to the exemption which was available to them, as the item imported by them would fall under Item No. 77(5) with a foot-note No. 8 of the Tariff." In the above judgment, the reference to Item No. 77(5) is to that item of the Indian Customs Tariff, 1934 which, inter alia, covered photographic cameras. The corresponding Heading in the successor Customs Tariff Act, 1975 is Heading 90.07. The reference to foot-note No. 8 in the High Court judgment is to exemption Notification No.23-Customs dated 25.1.69 which laid down a concessional rate of duty for "standard precision process camera for preparing process and photo litho blocks". The successor notification giving the similar exemption is Notification No. 112-Customs dated 1.7.1977.

4. The learned representative of the department requested in the aforesaid misc. application that this judgment of the Bombay High Court, which had come to his knowledge after the Larger Bench had concluded the hearing on 29th September, 1987, should be taken into consideration before deciding the matter. Accordingly, a copy of the application together with a copy of the High Court judgment and other enclosures were served on the appellants and the matter was re-opened and heard again today. Both sides confirmed that the goods involved in the Bombay High Court judgment and the present appeal were similar.

Both sides also stated that to their knowledge there was no other judgment contrary to the Bombay High Court judgment. The appellants stated that though they were not giving up their plea that the goods fell under Heading 84.35 of the

Customs Tariff Act, they would be satisfied if the Bombay High Court judgment was followed and benefit of the exemption Notification No. 112-Customs dated 1.7.1977 was extended to them.

5. The learned representative of the department stated that since the Bombay High Court had held that the scanner was akin to a process camera from the point of view of end-use and function, the Heading of the Customs Tariff Act applicable would be the Heading No. 90.07.

Regarding applicability of the exemption Notification No. 112-Customs dated 1.7.77, though in his written application aforesaid, he had stated that "following ratio of the Bombay High Court decision the benefit of this notification may have to be extended to the scanner in dispute", in his oral pleading today he expressed certain reservations regarding applicability of the exemption notification.

6. We have given the matter our earnest consideration. There is no dispute that the goods involved in the Bombay High Court judgment and those in the appeal before us were similar. There is also no dispute that the Bombay High Court judgment is the only judgment on the point; there is no contrary judgment of any other High Court or the Supreme Court. In such circumstances, it has been the practice of this Tribunal to respectfully follow the High Court judgment regardless of our own views and reservations in the matter. In keeping with this practice, we order that the benefit of concessional rate of duty laid down in the exemption Notification No. 112-Customs dated 1.7.77 should be extended to the appellants.

7. As regards valuation, we find that the Acknowledgment of Order, a copy of which is placed on page 20 of the paper book, stated as under:- The above price includes the free services of an engineer for one week and a photographer for three weeks. The round trip travelling expenses and a daily allowance for our personnel are chargeable extra".

(1) The first part, comprising the services of an engineer for one week and a photographer for three weeks, was free in the sense that its cost already stood included in the CIF price of the machine.

(2) The second part, comprising the round trip travelling expenses and a daily allowance for the suppliers' personnel, was chargeable extra.

The appellants want exclusion of both parts on the ground that they were post-importation charges. We find that the extra charge, if any, paid by the appellants for the second part was clearly a post-importation charge. We, therefore, order its exclusion from the assessable value of the machine. However, so far as the first part is concerned, the evidence on record is not clear on the point whether the customer had an option to buy the machine at a somewhat lower price without the services of the engineer and the photographer. The learned representative of the department maintains that there was no option.

Though the words "free services" and inclusive price in the first part could suggest that the service cost was a compulsory and essential part of the sale price of the machine, we consider that further probe is necessary to establish the facts. Accordingly, we give an opportunity to the appellants to clarify the point with evidence before the Assistant Collector. This should be done within three months from the date of receipt of this order. If the appellants can show that it was open to a customer to purchase the machine without the service at a lower price, the said lower price of the machine should be taken as the basis of assessment. If, however, the position emerges that there was no option available to the customer and even if he did not want the service he had yet to pay the full composite price inclusive of the service element, the said composite price should form the basis of assessment. This would be justified for the simple reason that the machine was not ordinarily sold or offered for sale in the course of international trade for delivery at the time and place of importation at any lesser price.

8. In the result, we allow the appeal partly in the above terms. The consequential relief should be granted to the appellants.

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