

Microland Ltd. and ors. Vs. Commissioner of Customs (Prev.)

Microland Ltd. and ors. Vs. Commissioner of Customs (Prev.)

SooperKanoon Citation : sooperkanoon.com/43166

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-20-2006

Reported in : (2006)(111)ECC720

Judge : A Wadhwa, A T K.K.

Appellant : Microland Ltd. and ors.

Respondent : Commissioner of Customs (Prev.)

Judgement :

1. These are applications for waiver of pre deposit of duty of Rs. 4,88,85,399/- demanded from M/s Ultra Tek Devices now known as M/s Celtron Power India Pvt. Ltd. and another Rs. 4,24,90,068/- from M/s Celtron Power India Pvt. Ltd. in respect of seized goods provisionally released to them. Besides this penalties have been imposed to the extent of Rs. 1 Crore on M/s Ultra Tek Devices Ltd. Rs. 50 lakhs on Shri Manohurlal Tandon, Rs. 15 lakhs on Shri Pradeep Kar, Rs. 1 lakh on shri Ashok Radhakrislman, Rs. 15 Lakh on Shri Anand Sudarshan, Rs. 10 lakhs on Shri Navin Kulkami, Rs. 50 lakhs on M/s Microland Ltd. Rs. 25 lakhs on Shri Venkatraman Raghavendran.

2. The brief facts of the case are that the appellants M/s Ultra Tek Devices Ltd. a part of Tandon Group of Companies had a unit in SEEPZ, Mumbai along with other units of Tandon Group. They filed an application dated 16.5.94 with the Office of the Development Commissioner at SEEPS seeking DTA sale entitlement against their export for the period from 1.4.93 to 31.3.94. As per the statement of

computation and sale effected during the subject period this unit had declared to have produced and exported 10,76,488 pieces of power supply units of an aggregate FOB value of Rs. 74,32,381,094/- and also declared to have produced and exported 20 computers of a total FOB value of Rs. 2,49,535/-. Against this collective FOB export value they claimed DTA sale entitlement for an aggregate value of Rs. 18,62,97,476/- Even though they have exported only 20 computers they requested for entire DTA entitlement towards computer systems. They were granted permission for import and sale of 14,912 number of computer systems of a total value Rs. 18,60,52,604/-.

3. On scrutiny and verification of import records it was revealed that they had imported several computer systems at concessional rate of duty under their above DTA sale entitlement and sold to the dealers of foreign brand computers viz. M/s Microland Ltd. M/s Unicorp Inds. Ltd. and M/s Golden Computers Ltd. etc. The imported consignments were declared to contain parts and components of computer systems but on examination were found to be complete computer systems and investigations revealed that they along with their buyers M/s Microland Ltd. and M/s Unicorp Inds. Ltd. have in collusion with the supplier M/s Compaq Computers, Singapore imported complete computer systems in the guise of parts and accessories for which they had no manufacturing / assembling facilities and that it was done on a specific directions from them and their buyer M/s Microland Ltd. and M/s Unicorp Inds. Ltd. This was confirmed by the statement of Shri V.Raghvendran, Production Manager of M/s UTD and Shri Navin Kulkarni who in his statement stated that they were getting computers and that in their documents these were shown as parts and peripherals and that for such raising the invoice / purchase orders for computers describing them as pans, he was instructed by his boss Shri Raghvendran. Shri Kulkarni further stated that they did not give price break-up to their buyers for various models of computers and they had been getting credit note from the suppliers for computers.

4 In view of the above they were issued Show Cause Notices in respect of 62 bills of entry filed by them treating to consider the parts and accessories of computer systems, imported by them as complete computer systems by themselves and since no manufacturing activity was involved they were liable to pay full duty

levyable on these computer systems amounting to Rs. 5,35,66,372/- and seeking to confiscate the computers which were seized valued at Rs. 4,74,46,951/- and imposition of penalty on the units of M/s Ultra Tek Devices, M/s Microland Ltd, Bngalore, M/s Unicorp Industries Ltd. New Delhi and their officers. The duty demanded in the Show Cause Notice was confirmed and penalty imposed as indicated in para 1 above.

5. The learned advocate for the appellant Shri Asthama submits that in this case duty was not liviable as what was imported was parts only and not computer systems and the department has not produced any evidence to show that they were complete computer systems and that what was examined were computer systems already manufactured and therefore they have a prima-facie case in their favour and they have already deposited duty amounting to Rs. 2.74 Crore and therefore the balance amount of duty and penalty should be waived. He also submitted that in this case the Show Cause Notice was issued by the Assistant Commissioner (Preventive) who had no jurisdiction to issue such a notice as the goods were imported in SEEPZ area.

6. The learned SDR however submits that there is ample evidence to show that what was imported was complete computer systems which did not require any further manufacturing except some connecting wires and referred to the statements of Shri Navin Kulkarni at Para 33 of the Order-in-Original and the correspondence exchanged by M/s Microland Ltd with the supplier M/s Celtron Power India and with the concerned staff of M/s Ultra Tek Devices which reveals that the computer systems ordered by M/s Microland Ltd on M/s Compaq were taken to M/s GPS Sales & Services, Singapore for breaking up before shipment for which M/s Compaq used to furnish the relevant price list for correlation purpose.

He further submitted that there is ample evidence against them and therefore the pre deposit of duty and penalty should not be waived. He further submitted that Assistant Commissioner (P) has jurisdiction over the entire area of Bombay as per the Notification No. 15/2002-CUS (90) dated 7.3.2002.

7. We have considered the submissions. We find that the appellants have been unable to make out a prima-facie case in their favour and the merits of the evidence can be looked into only at the time of final hearing. At present there is ample evidence against them. In view of the same we direct them to deposit Rs. 1 Crore in addition to Rs. 2.74 Cr. already deposited by them and on such deposit there shall be waiver of the pre deposit of the balance amount of duty and penalty imposed on various appellants and recovery there of stayed till disposal of the appeal. Compliance should be reported by 21.9.06. Failure to comply shall result in dismissal of appeal without further notice.

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