Hcl Peripherals Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Apr-02-2008

Judge : P Chacko, K T P.

Appellant : Hcl Peripherals

Respondent : Cce

Judgement :

1. This appeal filed by the assessee is against a demand of duty of over Rs. 99.00 lakhs for the period 2003 - 04 to 2005 - 06 as also against equal amount of penalty. The demand of duty is on what is called "touch screen kiosks" cleared as computers of Heading No. 84.71 of the First Schedule to the Central Excise Tariff Act, at concessional rate of duty from 8.1.2004 to 8.7.2004 and at 'nil' rate of duty from 9.7.2004 in terms of Notification No. 6/2002-CE dated 1.3.2002 (as amended). As per the entry at Sl. No. 261 in the Table annexed to the above Notification (as amended), computers of Heading 84.71 were chargeable to concessional rate of duty or to 'nil' rate of duty, as the case may be, during the period of dispute. In the Notification as amended on 9.7.2004, the term "computer" was explained as under: Explanation:- For the purposes of this exemption, "computer" shall include central processing unit (CPU) cleared separately; or CPU with monitor, mouse and key board, cleared together as a set; but shall not include input or output devices or accessories such as monitor, key board, mouse, modem, uninterrupted power supply system, or web camera cleared separately.

In the impugned order, learned Commissioner found that (a) the subject goods were being sold as 'kiosks' and not as computers or computer peripherals; (b) special functional units such as Coin Validator, MICR (Magnetic Ink Character Reader), Bar Code Reader, Touch Screen, Printer, which were not found in normal computers, were incorporated in the kiosks; (c) the price of each kiosk was more than twice that of a normal computer; (d) the General Manager (Procurement), ELCOT, stated that the appellants' kiosk was different from a computer in construction, configuration and performance; and (e) an EDP Assistant of M/s. Chennai Silks also stated that it was not a computer but only a computer-based information-displaying system. For these reasons, after rejecting the contentions raised by the assessee and the evidence adduced by them, learned Commissioner held that the kiosks manufactured and cleared by them were not computers and hence ineligible for the concession/exemption under Sl. No. 261 of the Table annexed to Notification No. 6/2002-CE (as amended). Accordingly, he confirmed the demand of duty against the assessee and imposed a penalty on them.

2. After examining the records and hearing both sides, we note that there is no dispute regarding the classification of the item. Both the department and the assessee have classified it as an 'Automatic Data Processing' machine (ADP machine, for short) under Heading 84.71 of the CETA Schedule. Learned Commissioner has observed that "all computers are ADP machines, but all ADP machines are not computers". According to him, the kiosk in question is not a 'computer' as envisaged in Notification No. 6/2002-CE (as amended). Though the impugned order admits that the kiosk consists of CPU, monitor, mouse and keyboard, it does not recognize it as a computer conforming to Explanation to the Notification for the reason that additional items such as Coin Validator, MICR, Touch Screen etc. are also contained in the kiosk. On the other hand, it is the case of the assessee that the kiosk includes a CPU with monitor, keyboard and mouse cleared together as a set satisfying the requirements of computer as per Explanation to the Notification and that any add-on features would not per se make it anything other than computer.

3. A sample of kiosk was displayed before us and we have seen the machine and its operation. The displayed machine consisted of a CPU, monitor, keyboard and mouse, all housed in a steel sheet cabinet (casing). We were told that the keyboard and mouse were meant for only change of programmes by the technician in charge of the machine and was not meant for users. The keyboard and mouse were found in a drawer provided with a lock. We have also seen the counsel himself operating the machine by touching and moving his finger on the screen of the monitor. Undisputedly, any user could operate the kiosk in that manner.

4. The appellants state that their kiosk can receive, process, store and deliver data in the form of digital signals. The kiosk is an ADP machine, along with such accessories (Coin Validator, MICR etc.) as required by customer, housed in a metal sheet casing. It has a touch-screen monitor instead of a normal monitor. Input signals are received through human touch in the screen of the monitor itself, which are converted into digital signals and transmitted to CPU for processing. By directly receiving input data, the touch-screen monitor acts as an input unit and, by converting the signals provided by the CPU into a visual display, the monitor also acts as an output unit.

Thus the kiosk houses input, processing/storing and output units as in a computer. A keyboard and mouse have also been provided to be used for change of programmes. Learned Counsel has narrated these features of the kiosk and has submitted that the machine is nothing but a computer customized to meet the specific requirements of customers including Govt. agencies. In this connection, he has referred to the manufacturer's catalogue also. Like any other computer, the kiosk is equipped with necessary operating systems. A customer who places order for a kiosk is also required to place order for operating system like 'MS Windows'. The computer in the kiosk can also be included to the internet through a telephone/broadband/DSL. Thus, according to learned Counsel, the kiosk has all the features of a computer as understood in common parlance.

5. On the other hand, learned SDR has sought to distinguish a kiosk from a computer by referring to this term discussed in Dictionary of Computer Science by

Valerie Illingworth and John Daintith. This dictionary contains the following information on kiosk: Kiosk: A booth providing a computer-related service such as a theater booking service or tourist information service. A kiosk requires a very simple, physically robust interface, such as a TOUCH SCREEN, that anyone can use without training or documentation.

We find that, according to the above dictionary, a kiosk is a booth providing a computer-related service. Relying on Explanatory Notes to Harmonized Commodity Description and Coding System (HSN Notes, for short), learned SDR has submitted that a kiosk provides a computer-related service in the sense that it only works in conjunction with a computer. It is submitted that, as per HSN Notes, such a machine which works in conjunction with a computer is not a computer by itself.

However, when the advocate demonstrated the working of a kiosk in the court, the SDR could not show that it was working in conjunction with some computer placed outside or remotely from it. Obviously, the computer was incorporated in the kiosk itself, a fact demonstrated by the advocate and not rebutted by the SDR. The expression "computer-related service", used in the dictionary, must be understood as "service rendered with the aid of computer". The kiosk in question has been shown to provide such service to users with the aid of computer incorporated in it.

6. SDR has particularly referred to General Explanatory Note 5(E) to Chapter 84 of HSN and has argued that, as the appellants' kiosks perform specific functions required by their customers, the machines would be classified in the headings appropriate to the respective specific functions. But, we find that, for the above Note to apply, the specific function must be something other than data processing. Learned Commissioner himself has classified the kiosks as ADP machines under Heading 84.71. acknowledging their data processing and allied functions and the Revenue has not challenged the same. Therefore the SDR cannot be heard to argue as above. The short question before us is whether the ADP machines of Heading 84.71 can be called "computers". The Central Board of Excise & Customs called them "computers" long ago vide Circular No. 454/20/99-CX dated 12.4.1999.

7. We find that the kiosk in question answers the features of computer given in the dictionary cited by SDR. The dictionary provides the following information on 'computer';- Computer: A device by which data, represented in an appropriate form, can be manipulated in such a way as to produce a solution to some problem. It is able to perform a substantial amount of computation with little or no human assistance. In general when the word computer is used by itself it refers to a digital computer. The other basic form of computer is the ANALOG COMPUTER, which is far less versatile and thus finds fewer more specialist applications.

A digital computer accepts and performs operations on discrete data, i.e. data represented in the form of combinations of CHARACTERS. Before being fed into the computer the characters consist of digits, letters, punctuation marks etc. Inside the computer all these characters are in binary form, encoded as combinations of binary digits, or BITS (see binary representation). ARITHMETIC and LOGIC OPERATIONS are performed on these strings of bits following a set of instructions.

The instructions form what is known as a PROGRAM, which is stored along with the data in the MEMORY of the computer.

(b) memory (MAIN STORE and BACKING STORE) in which to store the data and programs; (c) a CONTROL UNIT and an ARITHMETIC AND LOGIC UNIT (ALU) for processing the data following the sequence of program instructions; the control unit and ALU are generally combined into a CENTRAL PROCESSOR. The instructions of the stored program are executed one after another; a device in the control unit (the INSTRUCTION ADDRESS REGISTER) indicates the LOCATION in memory from which the next instruction is to be taken. The instructions indicate how items of data, specified by their locations in memory, are to be used, or what information is to be read from the input devices or written to the output devices.

Computers range widely in performance, size and cost. They are often classified as MICROCOMPUTERS, MINICOMPUERS OR MAINFRAMES. All three groups may be used as general-purpose machines, capable of solving a wide variety of problems. Alternatively they may be designed for a special purpose or for a limited range of problems.

According to HSN Notes, a complete digital data processing system has the following essential components: (1) A central processing unit which generally incorporates the main storage, the arithmetical and logical elements and the control elements; in some cases, however, these elements may be in the form of separate units.

(2) An input unit which receives input data and converts them into signals which can be processed by the machine.

(3) An output unit which converts the signals provided by the machine into an intelligible form (printed text, graphs, displays, etc.) or into coded data for further use (processing, control etc.) The aforesaid main components of a digital computer are demonstrably present in the kiosk manufactured and cleared by the assessee. The touch-screen of the monitor in the kiosk has been shown to be the input unit for an ordinary user. (For a technician to change programme, the input device includes keyboard and mouse also). The monitor acts as output unit also. HSN Notes also say that input and output units may be combined in one single unit. That the kiosk contains a central processing unit (CPU) capable of storing and processing data is also a fact recognized by the Commissioner, who has accepted the factual position that an ADP machine is housed in the kiosk. We have found this machine to be a customized version of computer. In this context, it is pertinent to recollect that CBEC had noted long ago (Circular No. 454/20/99-CX ibid) that Heading No. 84.71 of the CETA Schedule described computers as ADP machines. In the impugned order, learned Commissioner has not disclosed any rationale underlying his proposition that "...all ADP machines are not computers.

8. The appellants' catalogue on kiosks designed for a variety of purposes is available on record and the same, for instance, contains the following information on "HCL Bee Jupiter Kiosks": The HCL Bee Jupiter kiosk is designed for extremely rugged and it can be placed in any Environment. We are proud to introduce this model, packed with Coin Validation Machines. It validates the coin and allows the user to access the system.

These kiosks are well suited for the uses like Public Internet Access. And also as a point-of-information system. Installed with CRT Monitor with Touch screen

(Capacitive type).Body Color Customized color Options PC Configuration Pentium III/IV We don't think that anyone with fair awareness about computers can say that these machines incorporating PC configurations along with input (Touch Screen) and output/display (Monitor) units are not computers or that they are something else on account of add-on features like Coin Mechanism.

9. In the impugned order, learned Commissioner relied on a statement of the General Manager (Procurement), ELCOT as also on a statement of an 'EDP Assistant' of M/s. Chennai Silks. The Silksman's evidence is not worth mentioning as he (in cross-examination) could not read his own statement. The ELCOT functionary stated that the kiosks supplied by the assessee were not computers as understood in common parlance. But, as a specialist holding high technical qualifications (B.E. from I.I.Sc, Bangalore and M. Tech. from I.I.T., Kharagpur) and handling procurement of IT-related products for the Govt. of Tamilnadu, he also stated that the kiosk was basically a computer. He reiterated this fact in cross-examination also. It was in the context of comparing its structural and operational features with those of a computer (desktop) known to the common man that the specialist stated that the kiosk was different from a computer in construction, configuration and performance. The dictionary referred to by SDR also says that computers range widely in performance, size and cost. In our assessment, the ELCOT expert did not mean to say that the kiosk did not house a computer as understood in technological parlance. It is common knowledge that information technology is a fast-developing phenomenon and the commoners in our country are yet to keep pace with it. Common parlance is, therefore, likely to lag behind technological parlance.

Those associated with the technology, manufacture and marketing of the kiosks -- like the appellants and the ELCOT functionary -- will identify these machines today as computers customized for special purposes, but the laymen may take some more time to do so. Therefore, in our considered view, the Commissioner applied the common parlance test inappropriately to the kiosks in question. He ought to have gone by the Explanation to the Notification, which explained the term 'computer', rather than by common parlance.

10. Learned SDR has cited a few decisions of the Supreme Court to support the Commissioner's reliance on common parlance. In the case of Park Biscuits (P) Ltd. v. State of Bihar , the view taken by the court in two earlier cases to the effect that, in the absence of evidence of understanding in common parlance, the plain language used in the statute should be adopted, was reaffirmed. For the reasons we have stated in the previous paragraphs, this ruling is applicable and, accordingly, one has to go by the plain words used in the Explanation to the Notification. This Explanation by its very nature is clarificatory and has effect from the date of the Notification. In the case of Indcon Structural (P) Ltd. v. CCE, Chennai , it was held that words and expressions in taxing statutes, unless defined in the statute itself, should be construed according to trade understanding. In the case on hand, "computer" is a term defined in the Explanation to the Notification itself and hence there is no need of referring to trade parlance. In the case of Craft Interiors Pvt. Ltd. v. CCE, Bangalore meaning of words used in taxing statute was held to prevail over dictionary meaning. This ruling is also not applicable to the present case inasmuch as the term "computer" has been defined in the Explanation to the Notification. As per this Explanation, what are excluded from the purview of "computer" for the benefit of the Notification are input/output devices or accessories cleared separately. CPU with monitor, mouse and keyboard cleared together as a set is clearly within its ambit. The kiosk presented before us was such a set (with add-on features) and the same would, by all means, qualify to be called a "computer" in terms of the above Explanation.

11. The assessee produced a certificate from the Divisional Commercial Manager (Chennai Division), Southern Railway, who certified that they had received kiosks from the appellants and were using the same as computer terminals at Chennai Central Railway Station. A similar certificate issued by Rajiv Gandhi Shiksha Mission was also produced before the Commissioner. This certificate also stated that they were using the kiosks supplied by the appellants, in rural and urban schools. Both these certificates certified the kiosks to be 'computers with add-on features'. This evidence produced by the assessee, however, was rejected by the Commissioner without stating valid reason.

12. Another reason stated by the Commissioner for deciding against the assessee is that the price of a kiosk was much higher than that of a normal computer (desktop) and hence the kiosk would not be treated as a computer. We are surprised at this reasoning. Would the Commissioner treat laptops, palmtops etc. [which are much more expensive than desktops] not to be computers? The dictionary produced by learned SDR, Itself, says that computers range widely in performance, costs etc.

Learned Commissioner has also reasoned that, as the appellants called their machine 'kiosk' and not computer, it cannot be treated as computer. In this regard also, it would suffice to say that, if an ADP machine commonly called 'laptop' or 'notebook' can be accepted as a computer in generic sense, a kiosk can also be so accepted.

13. We have found the kiosk in question to be a computer of Heading 84.71 of the CETA Schedule attracting concessional/'nil' rate of duty under Sl. No. 261 of the Table annexed to Notification No. 6/2002-CE (as amended) for the relevant period. Hence there can be no demand of duty, nor any penalty, on the appellants. The impugned order is set aside and this appeal is allowed.

(Operative portion of the order was pronounced in open court on 2.4.2008)