

Mirc Electronics Ltd. Vs. Commissioner of Customs (Acc), Mumbai

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-23-2010

Judge : The Honourable Mr. P.G. Chacko, Member (Judicial) & the Honourable Mr. S.K. Gaule, Member (Technical)

Appeal No. : APPEAL No. C/749 of 2002

Appellant : Mirc Electronics Ltd.

Respondent : Commissioner of Customs (Acc), Mumbai

Advocate for Pet/Ap. : Ms. Aparna Hirandagi, Advocate, for appellant. Shri S.S. Katiyar, Authorised Representative (SDR), for respondent.

Judgement :

Per: P.G. Chacko

In this appeal filed by the assessee, the dispute relates to both classification and valuation of the goods imported by them. The appellant (assessee) filed a bill of entry on 4.7.2000 describing the goods as "MEDIA WORKSTATION NON-LINEAR EDITING SYSTEM" and classifying the same under 8471 10 00. In the connected invoice of the supplier, the goods were described as "JVC PROFESSIONAL PRODUCTS Media Workstation Non-Linear Editing System (Including 3D DVE, MW-D30U and SDI, MW-D10U)". The invoice provided the total value of the goods as JY 3,255,000. Before the goods were assessed, the importer, in a letter dated 7.7.2000 addressed to the Deputy Commissioner of Customs (Gr.VA), stated that

they had imported a hardware (CPU) loaded with editing software, keyboard and a mouse and that they would be using a local monitor in conjunction with the imported system. In this letter, the importer also canvassed classification of the goods under SH 8471.49. Subsequently, the importer produced a certificate from the supplier, dated 1.8.2000, which provided a breakup of the value of the imported system, as under:-

1. Pentium computer with accessories and

breakout box: J.Yen 155,000

2. Microsoft Windows NT Software: J.Yen 100,000

3. Media Workstation MW-S1200E Software J.Yen 3,000,000

Total Invoice Value J.Yen 3,255,000

On the strength of this certificate, the appellant requested for amendment of the bill of entry, by letter dated 8.8.2000 submitted to the Deputy Commissioner. After considering this request of the importer, the Deputy Commissioner (Assessing Authority) ordered that the entire system imported by them be assessed to duty on full value shown in the invoice in terms of SH 8543.89 of the CTA Schedule and SH 8543.90 of the CETA Schedule for purposes of basic customs duty and CVD respectively. The assessee's claim for classification of the first two items mentioned in the supplier's certificate under SH 8471.49 and for classification of the third item under Heading 85.24 was rejected. Aggrieved by the assessment order, the assessee preferred an appeal to the Commissioner (Appeals) but without any success. Hence the present appeal of the assessee.

2. After examining the records and hearing both sides, we find that there can be no grievance for the appellant in relation to amendment of the bill of entry, which was initially sought by them. It appears, the submissions made by the party in their application for amendment were duly considered by the original authority.

3. The learned counsel for the appellant submits that pentium computer with accessories mentioned at serial No.1 in the supplier's certificate along with the operating software mentioned at serial No.2 of the said certificate would be appropriately classifiable under Heading 84.71 (SH 8471.49). It is submitted that this system squarely satisfies all the requirements of the relevant Chapter Note, viz. Notes 5(A) and 5(B) to Chapter 84. On the other hand, the learned SDR submits that, as the system was imported for a specific purpose (editing), it should be classified with reference to such function in terms of Chapter Note 5(E). This Chapter Note reads thus: "Machines performing a specific function other than data processing and incorporating or working in conjunction with an automatic data processing machine are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings." The supplier's literature on the goods indicates that the CPU with its accessories and the operating software loaded therein can be classified only as an automatic data processing machine/system in terms of Chapter Notes 5(A) and (B). The specific function referred to by the learned SDR is editing of cinematographic films etc. It is evident from the technical literature available on record that this function of editing involves automatic data processing. It is not a function other than data processing and, therefore, would not attract Chapter Note 5(E). In any case, the Revenue has not succeeded in showing that the above system, which was imported, admittedly, for the purpose of editing of cinematographic films etc., could be classified as an electrical machine/apparatus under the residual sub-heading 8543.89 under Heading 85.43. There is yet another software, viz. media workstation software, which remains to be classified. The appellant would like it to be classified under Heading 85.24 as computer software whereas the Revenue would claim classification of the item again under SH 8543.89. We find that this software was found, by the assessing authority, to have been etched on the hardware. It is not in dispute that this software was meant to be used for the editing function of the system. The assessing authority found thus: "The software used for editing is etched on the hardware which is an integral part of the module". The learned SDR has pointed out that this finding of fact was not challenged by the assessee before the first appellate authority. He submits that the finding has not been challenged even in the present appeal before the Tribunal. Thus it is settled fact that the

above application software, in the form it was imported, was etched on the hardware which was an integral part of the system. Classification of this software will have to be determined in this backdrop. At this juncture, the Hon'ble Supreme Court's judgment in the case of CC, Chennai vs. Hewlett Packard India Sales (P) Ltd. 2007 (215) ELT 484 (SC) is apposite. In the said case, what was considered by the apex court was a dispute relating to classification of a laptop with operating software loaded therein. It was held that when a laptop was imported with inbuilt preloaded operating system recorded on HDD, the said item formed an integral part of the laptop (computer system) and hence the entire system would be classifiable as a single unit under Heading 84.71 of the CTA Schedule. Claiming support from this decision of the apex court, the learned SDR has rightly submitted that any application software etched on the hardware forming integral part of the automatic data processing system imported by the appellant should necessarily be classified along with the system as a single unit under Heading 84.71, if not under Heading 85.43. The learned counsel has contested the above argument of the SDR by relying on the apex court's decision in PSI Data Systems Ltd. vs. CCE 1997 (89) ELT 3 (SC), wherein it was held that the value of software sold along with computer was not includible in the assessable value of the computer since there was a distinction between computer and software. The learned SDR has sought to distinguish the case of PSI Data Systems by pointing out that, unlike in the instant case, the software considered in the case of PSI Data Systems Ltd. (supra) was in a form loaded in a CD which was sold along with computer by the manufacturer. It is pointed out that, in the instant case, the application software was in the form etched on to the hardware thereby constituting an integral part of the system. We have found a valid point in this argument. The value of a software imported in a condition etched in the hardware being integral part of automatic data processing system is not liable to be excluded from the assessable value of the system. The apex court's decision in Hewlett Packard India Sales case apparently lends support to this view. In that case, operating system was recorded on HDD which was an integral part of the laptop which fell for classification. In the present case also, admittedly, the application software vide item No.3 in the supplier's certificate dated 1.8.2000 was imported in a form etched in hardware forming integral part of the entire system imported by the appellant and, as we

have already noted, this fact found by the assessing authority has not been disputed even at this stage. Admittedly, the software was imported for the specific purpose of use in conjunction with the automatic data processing system which was also imported in the same consignment, for the specific purpose of editing cinematographic films etc. In other words, this application software was not intended for any other application but for such editing. This fact also claims support from the letter dated 7.7.2000 submitted by the appellant to the Deputy Commissioner of Customs, wherein it was stated thus: "..... we have imported a hardware (CPU) loaded with editing software, keyboard and a mouse. We will be using local monitor for this system." For all these reasons, we hold that what is called "media workstation software" and figures at serial No.3 of the supplier's certificate dated 1.8.2000 and the importer's letter to the Deputy Commissioner, dated 8.8.2000, is an integral part of the system (editing system) imported by the appellant and, therefore, for the purpose of both classification and valuation, it should stand included with the rest of the system.

4. In other words, the entire system imported by the appellant would stand classified under SH 8471.49 and the total invoice value thereof would be includible in the assessable value. Accordingly, we dispose of this appeal with a direction to the assessing authority to reassess the goods in terms of this decision and grant consequential benefits (if any) to the assessee in accordance with law.

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