

Data Tech Systems Vs. Commissioner of Central Excise, Coimbatore

Data Tech Systems Vs. Commissioner of Central Excise, Coimbatore

SooperKanoon Citation : sooperkanoon.com/943796

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Chennai

Decided On : Nov-24-2009

Judge : The Honourable Ms. Jyoti Balasundaram, Vice President & the Honourable Dr. Chittaranjan Satapathy, Technical Member

Appeal No. : Appeal No.E/300 of 2003

Appellant : Data Tech Systems

Respondent : Commissioner of Central Excise, Coimbatore

Advocate for Pet/Ap. : Shri T.Ramesh, Advocate. Shri V.V.Hariharan, JCDR.

Judgement :

Per Jyoti Balasundaram

The authorities below have denied the benefit of small scale exemption to the assessee herein during the period 1996-97 upto 1999-2000 on online UPS and invertors manufactured by them on the ground that the goods bore the brand name CANSOFT which belonged to M/s.Cansoft Systems Pvt. Ltd. (hereinafter referred to as CSP). The duty demand of Rs.6,31,212/- has been confirmed as a result of such denial and a penalty of equal amount has been imposed.

2. We have heard both sides. The submission of the assessee is that the name CANSOFT belongs to one R.Anantha Krishnan, who is not only the proprietor of the appellants herein but also a Director in CSP and therefore the assessee did

not clear goods bearing somebody else's brand name but used their own brand name on the goods. However, we find that there is a clear admission by Shri Anantha Krishnan that the brand name CANSOFT is not owned by him. This is to be found in his statement. Further, Shri Mohandass Kamath, another Managing Director of CSP and one Shri Narasimha Moorthy, Accounts Manager of CSP have deposed that CANSOFT was the brand name of CSP. We, therefore, see no merit in the submission that brand name CANSOFT did not belong to CSP. However, we find force in the submission that the extended period of limitation is not available to the department against the assesseees for the reason that during the period in dispute, the law as it stood was to the effect that the use of brand name of the manufacturer of goods different from those manufactured by the brand name owner would not disentitle the user of the brand name from the benefit of the SSI exemption and it was only during the period subsequent to the period in dispute that it was held by the apex court in several decisions including Commissioner Vs Mahaan Diaries [2004 (166) ELT 23 (SC), Commissioner Vs Rukmani Pakkwell Traders [2004 (165) ELT 481 (SC)] and Commissioner Vs Bhalla Enterprises [2004 (173) 225 (SC)], that the use of a brand name of another person on any goods would disentitle the user to the benefit of SSI notification. In these circumstances, it cannot be said that assesseees were guilty of any suppression or misstatement with intention to evade payment of duty so as to apply the extended period of limitation against them. We find that part of the demand is within the normal period of limitation. As we have held against the assesseees on the merits of the issue, we uphold the demand within the normal period of limitation and set aside the demand for the period beyond the normal period. The duty demand within the normal period is to be recalculated and the question of imposition of penalty is also to be considered afresh and, for this purpose, we remit the case to the adjudicating authority who shall pass orders after extending a reasonable opportunity to the assesseees of being heard in person.

3. The appeal is thus partly allowed in the above terms.