Collector of Central Excise Vs. Video Master

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-07-1996

Reported in : (1996)(88)ELT117TriDel

Appellant : Collector of Central Excise

Respondent : Video Master

Judgement :

1. Being aggrieved with the extension of the benefit of Notification No. 102/82, dated [28-2-1982] to the respondents by the Collector (Appeals), the Revenue has filed the present appeal.

2. Shri A.K. Madan, learned SDR appeared on behalf of the appellant.

None appeared on behalf of the respondents despite notice of hearing issued on 26-3-1996. The Bench therefore, in its discretion proceeded to decide the appeal ex parte. Accordingly, heard Shri A.K. Madan, learned SDR and perused the record.

3. Shri A.K. Madan, learned SDR submitted that the respondents are the manufacturer of sound and image recording articles falling under Tariff Item 59 of the erstwhile CET. They filed their Classification List No.2/83 effective from 21-10-1983 claiming exemption under Notification No. 102/82, dated 28-2-1982 for recording video tapes and discs said to have been meant for circulation by their sub-distributors on rental basis. However the Asstt. Collector while deciding the

C/List rejected the claim of the respondents for exemption under the said Notification holding that the same amounts to sale under Section 2(h) of the Central Excises and Salt Act, 1944. However on appeal the Collector (Appeals) extended the benefit of the said Notification. Hence the present appeal filed by the Revenue. He took us through the definition given under Section 2(h) and after referring so he submitted that the respondents are transferring their goods to their sub-distributors on rent for 24 months after obtaining the alleged security deposit of Rs. 500/- per cassette on the condition that the said security deposit shall be forfeited in case of non-return or on cassettes returned in damaged condition. He highlighted that

(1) that the amount of security deposit appears to be equal or more than the cost of the cassette itself;

(2) that the renting period is too long; and

(3) that the amount of alleged rent was never disclosed. He stressed that in the instant case not a single instance was quoted by the respondents to show that cassette said to have been given on rental basis was ever returned. In this premises he submitted that the said transaction amounts to sale and therefore, in view of the proviso to Notification No. 102/82 read with definition given in Section 2(h) of the Act would amount to sale.

4. Considered. In the Central Excises and Salt Act, 1944 the definition of sale has been given in Section 2(h) which reads as follows :- "2(h) 'Sale' and 'Purchase', with their grammatical variations and cognate expressions, mean any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration." "In exercise of the powers conferred by Subrule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts recorded articles, falling under Item No. 59 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), from the whole of the duty of excise leviable thereon: (i) are made from any article, falling under the said Item, and (ii) are not intended for sale or the promotion of sale." 5. From the Proviso to the said Notification it is clear that the exemption is available only if such articles are not intended for sale or the

promotion of sale. Considering the facts of the case we are of the view that the said transaction amounts to sale. [To wit...] the respondents are the manufacturer of sound and image recording articles that is to say the subject goods namely, cassettes; (ii) that they are transferring their goods to sub-distributors on payment of Rs. 500/- said to be a security deposit on the condition that in case of non-return of the said amount will stand forfeited; (iii) that the respondents have not disclosed the amount of rent which they were charging from the sub-distributors; and (iv) that the rental period of 24 months is too long in view of the nature of the subject goods that is to say the cassettes which is highly sophisticated.

6. Since from the definition of 'sale', as given in Section 2(h), the transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration also amounts to sale there remains no doubt to conclude that the transaction in the instant case was a sale.

7. In the result, we set aside the impugned order-in-appealtand allow the appeal filed by the Revenue.