

Decibells Electronics Pvt. Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-17-1996

Reported in : (1996)(88)ELT181TriDel

Appellant : Decibells Electronics Pvt. Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The appellant is "engaged in the manufacture of computers and office machines (calculating machine with computer) falling under Tariff Item 33D. The period under consideration is 1982 to 1985. The appellants were issuing two sets of invoices one for the machines and the other for consultancy services. The price lists which did not refer to the consultancy services were approved and clearances were made.

Subsequently after investigation show cause notice dated 14-4-1986 was issued demanding differential duty of Rs. 1,91,925.72. After receiving reply to the show cause notice and personal hearing, the Collector passed the impugned order confirming the demand and also imposing penalty of Rs. 25,000/-. This order is now challenged.

(iii) training of customers staff in regard to hardware and software; and 3. Ld. Counsel for the appellants submitted that there is no objection to the inclusion of charges referable under items (i) and (iv) referred to above, namely, pre-installation planning layout design and warranty maintenance in the assessable

value. He is disputing the inclusion in the assessable value of the charges referable to items (ii) and (iii) above, namely, installation and commissioning of equipment at site and training of customers staff in regard to hardware and software. Ld.

Counsel has referred to two decisions, the later of which is Collector of Central Excise, Bangalore v. Sunray Computers (P) Ltd. -1988 (33) E.L.T. 787. The Tribunal in that decision after referring to Bombay Tyres International case 1983 (14) E.L.T. 1896 (SC) and MRF Ltd. case -1987 (27) E.L.T. 553 (SC) held that the training which may be either prior or subsequent to the delivery of the computers can be said to have no nexus with the manufacture or marketability of the computer and therefore the charges thereon are not to be included in the assessable value. In regard to installation and commissioning charges, the Tribunal held that these are clearly post-removal expenses and the activity involved has no nexus with the manufacturing or marketability of the computer and their cost is not to be included in the assessable value of the computer. We follow the above decision and hold that the charges referable to such items i.e. (i) and (iv) referred to above are to be included in the assessable value and charges referable to items (ii) and (iii) referred to above are not to be included in the assessable value.

4. In the result, the impugned order is set aside to the extent it holds that part of the consultancy charges referable to installation and commissioning of equipment at site and training of customers staff in regard to hardware and software is to be included in the assessable value. Jurisdictional Commissioner will work out the differential duty actually due on the basis of this order and pass a fresh order. Since the charges referable two items cannot form part of the assessable value, we consider it fit to reduce the amount of penalty. The amount of penalty is reduced from Rs. 25,000/- to Rs. 5,000/-. The appeal is disposed of accordingly.

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