

(2023) 07 CESTAT CK 0036

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 42117 Of 2013

Commissioner Of Customs (Air)

APPELLANT

Vs

M/S. Neotric Informatique Ltd

RESPONDENT

Date of Decision : 21-07-2023

Acts Referred:

Citation : (2023) 07 CESTAT CK 0036

Hon'ble Judges : Sulekha Beevi C.S., Member (J); Vasa Seshagiri Rao, Member (T)

Bench : Division Bench

Advocate : Harendra Singh Pal, L. Gokulraj

Final Decision : Dismissed

Judgement

Sulekha Beevi C.S., Member (J)

1. Brief facts are that the respondent imported 'External Hard Disc Drives' under the cover of Bills of Entry and claimed the benefit of Notification No. 12/2012-CE dated 01.03.2012 by classifying the goods under CTH 84717020. Based on the reference from the DRI, Mumbai, these Bills of Entry were assessed on merits by classifying the goods under CTH 84717030 and denying the benefit of the notification. The respondent disputed the assessment and paid the duty under protest. After due process of law, the original authority held that as per the Central Excise Tariff Act, Hard Disc Drives and removable or exchangeable Disc Drives are different items and to be classified under CTH 84717020 and 85471730 respectively. The impugned goods which are external hard disks drives which are removable is not eligible for the benefit of the Notification No. 12/2012-CE dated 01.03.2012 at Sl. No. 255. The respondent / importer filed an appeal before the Commissioner (Appeals) who vide order impugned herein set aside the order and held that the goods are rightly classifiable under CTH 84717020 and that the appellant is eligible for the notification benefit. Aggrieved, the Department is now before the Tribunal.

2. The Ld. Authorised Representative Shri Harendra Singh Pal argued for the Department. It is submitted that the external hard disc drives are essentially presented and marketed as 'portable drives'. In addition to the features of portability, these external hard disc drives are different from internal hard disc drives in as much, as these external drives also encapsulate additional electronic circuits and connection interfaces that render them usable as a 'removable disc drive'. These goods are different from normal hard disc drives. It is submitted that the Commissioner (Appeals) has erred in setting aside the order passed by the adjudicating authority and holding that the importer / respondent is eligible for the benefit of Notification No. 12/2012-CE dated 01.03.2012.

3. The Ld. counsel Shri L. Gokulraj appeared and argued for the appellant. It is submitted that the issue stands covered by the decision of the Tribunal in the case of Commissioner of Customs, New Delhi Vs. Supertron Electronics P. Ltd. [2017 (357) ELT 401 (Tri. Del.)] which has been affirmed by the Hon'ble Apex Court as reported in [2018 (360) ELT A325 (S.C.)]. The Ld. counsel submitted that the Tribunal while passing the decision has taken note of the clarification issued by Ministry of Communications and Information Technology, vide Office Memorandum dated 05.06.2013. The said decision was followed by CESTAT Mumbai in the case of Lenovo India Pvt. Ltd. Vs. Principal Commissioner of Customs (Imports) vide Final Order No. A/86055-86056/2022 dated 09.11.2022. The Ld. counsel prayed that the appeal may be dismissed.

4. Heard both sides.

5.1 The issue is with regard to the classification of the hard disc drives and the eligibility of Notification No. 12/2012-CE dated 01.03.2012 Sl. No. 255. The relevant part of the Notification is reproduced as under:-

Sl. No.

Chapter or heading or sub-heading or tariff item of the First Schedule

Description of excisable goods

Rate

Condition No.

255

8471 70 or 8473 30 or 8523

The following goods, namely:-

(a) Microprocessor for computer, other than motherboards;

(b) Floppy disc drive;

(c) Hard disc drive;

6%

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5.2 It can be seen from the above Notification that hard disc drive would be eligible for the benefit of exemption. It is not stated whether the said hard disc are to be removable or exchangeable. Further, in column 2 the tariff heading is shown upto six digits only and does not specify upto eight digits.

6. The Tribunal in the case of Commissioner of Customs, New Delhi Vs. Supertron Electronics P. Ltd. (supra) had considered the very same issue held that external hard disc drive is classifiable under CTH 84717020 and is eligible for concessional rate CV duty as per the Notification. The relevant paragraph reads as under:-

"The Revenue is in appeal against Order-in-Appeal dated 29-4-2014. The brief facts of the case are that the respondent had imported "External Hard Disk Drive" and claimed exemption from CV duty under Notification No. 6/2006-C.E., dated 1-3-2006 and later, Notification No. 12/2012-C.E., dated 17-3-2012. The dispute in the present appeal is relating to classification of imported hard disk drive and its eligibility for concessional rate of CV duty. Original assessing authority has assessed the goods under Tariff Heading 8471 70 30 with effective CV duty of 12% denying the benefit of Notification No. 12/2012-C.E., dated 17-3-2012 (Serial No. 255). On appeal, Commissioner (Appeals), vide impugned order, allowed the appeal and set aside the assessment orders. The impugned order held that external hard disk drives are correctly classifiable under Tariff Heading 8471 70 20 of the First Schedule of the Customs Tariff Act.

2. In the grounds of appeal, the Revenue contended that the Commissioner (Appeals) erred in holding the external hard disk drives are eligible for CV duty concession. It is submitted that these external hard disk drives are correctly classifiable under "removable or exchangeable disk drives" under Tariff Item 8471 70 30. The

Revenue relied on certain references from internet to emphasize that removal or exchangeable disk drives are synonymous with portable or external disk drives. It is also submitted that external hard disk drives have additional circuits for this purpose. Removal or interchangeable are correctly referred to "external or portable type of drives". The background of exemption at the six digit level was also explained in the grounds of appeal and it was submitted that exemption notification should be strictly interpreted.

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4. We have heard both sides and perused the appeal records. We have also examined the samples of impugned goods as well as sample of removable or exchangeable disk drive during the course of hearing. We note that the classification of external hard disk drive assumes significance because of

concessional rate of duty available to only hard disk drive not to removable or exchangeable disk drives. The Revenue considers the imported items under 8471 70 30 whereas the impugned order by the Commissioner (Appeals) held the product under Heading 8471 70 20. The latter entry is eligible for concessional CV duty. We have examined the impugned order and grounds of appeal, closely. First of all, we note that the exemption notification specifies tariff heading up to six digits only, 8471 70, which covers both, hard disk drive and removable or exchangeable disk drives. Further, the next column of the table for description explain the goods only as hard disk drive among many other items. On careful consideration of the technical specification furnished, and the sample of imported items along with tariff entries and the exemption notification, we are in agreement with the findings in the impugned order. The terms hard disk drive used in the notification has not been amplified either by adding "external" or "internal". On this simple premise alone, exemption to the said item cannot be denied. Admittedly, the imported items are hard disk drive and are meant for external use with computer or lap-top as plug-in device. They are portable hard disk drive. The contention of the Revenue that they are only removable or exchangeable disk drive, is not factually or technically correct. We have perused sample of such removal or exchangeable disk drives. They have full drive mechanism in which storage media is inserted and along with such media can be removed and inserted in computer for usage. We have also perused the technical literature of the manufacturer of the impugned goods. Further, the technical opinion given by the Ministry of Communication and Information Technology, is directly on the issue. We find that in the appeal, the Revenue contested the factual findings in the impugned order. Guided by the expert opinion of the concerned Ministry and facts recorded in the impugned order, we do not find it fit to interfere with the impugned order"

(emphasis supplied)

7. The said decision of the Tribunal was affirmed by the Hon?ble Apex Court. We are therefore of the view that the impugned order does not call for any interference. The appeal filed by the Department is dismissed.