

(2015) 10 SC CK 0036

In the Supreme Court Of India

Case No : Civil Appeal No. 2010 of 2007.

Commissioner of Customs - Appellant @HASH Contessa Commercial Co. Ltd.

Date of Decision : 01-10-2015

Acts Referred:

Citation : (2015) 324 ELT 638 : (2015) 16 SCC 577

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri K. Radha Krishnan, Sr. Advocate, Arijit Prasad, A. Gupta and B. Krishna Prasad, Advocates, for the Appellant; S/Shri Vikram S. Nankani and S.K. Bagaria, Sr. Advocates, Alok Yadav, Somnath Shukla, Udit Jain, Praveen Kumar, Siddharth Singla, Sudarshan Singh Rawat, Ms. Bina Gupta, Ranjit B. Raut and Abhay A. Jena, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

1. The respondent-company herein had imported a consignment of CD ROMs from M/s. Gulf Software, UAE and declared the same as computer software. It filed Bill of Entry dated 26-5-1998 declaring the same as computer software on CD ROMs under Customs Tariff Heading 8524.99. Along with the said Bill of Entry invoices issued by M/s. Gulf Software showing price of USD 15 per piece were also filed thereby disclosing aggregate amount of USD 60,72,000 for the 404800 pieces covered by 8 invoices. The appellant/Revenue herein, acting upon some intelligence reports that few companies were importing huge quantity of junk software on CD ROMs from Gulf countries without payment of customs duty and also declaring very high value of such goods thereby availing various benefits by indulging in those practices. On that basis, search was conducted at the premises of the respondent-company on 25-7-1998. However, nothing incriminating was recovered during that search. The Authorities also recorded the statement of one Mr. R.K. Kishorepuria, Director of the respondent-company under Section 108 of the Customs Act on the same day. Thereafter, statement of Mr. Sunil Kishorepuria, Chief Executive of the respondent-company was also recorded on 26-11-1998. Based thereupon, show cause notice dated 25-1-2001 was issued to

the respondent-company regarding over valuation, as well as higher value, the value at which the goods of M/s. Gulf Software, UAE were sold. In this show cause notice, it was also alleged that the respondent-company wrongly claimed benefit of exemption Notification No. 11/1997-Cus., dated 1-3-1997 and evaded payment of excise duty thereby. We may also mention at this stage that before completing assessment, opinion from the Electronics and Computer Software Export Promotion Council was sought which it gave vide its letter dated 19-6-1998. This expert body opined that the goods were computer software and value which was declared appeared to be fair in the international market for the titles of such goods. Notwithstanding, the Order-in-Original passed by the Adjudicating Authority confirmed the demand raised in the show cause notice. The appeal there against was filed by the respondent-company before the Customs, Excise & Service Tax Appellate Tribunal (hereinafter referred to as "the Tribunal"). The Tribunal has allowed the appeal thereby quashing the Order-in-Original passed by the Commissioner [2007 (208) E.L.T. 299 (Tri. - Kol.)].

2. A perusal of the order of the Tribunal would show that the representative of the Revenue conceded that insofar as application of exemption notification is concerned, the respondent-company was entitled to benefit thereof in view of the judgment of this Court in Commissioner of Customs, Chennai v. Pentamedia Graphics Ltd. [(2006) 9 SCC 502 = 2006 (198) E.L.T. 164 (S.C.)].

3. Thus, it is clear from the above that the Revenue accepted that CD ROMs which were imported by the respondent-company were capable of interactivity and the same would be covered by the definition of "computer software" contained in the exemption notification.

4. In these circumstances, the only other issue which was to be considered by the Tribunal related to the declaration of value. The Tribunal has decided that issue in favour of the respondent-company by observing that in the facts of this case and having regard to the opinion of the expert body disclosing that the value of USD 15 per piece was fair in the international market. The declaration of the price in the Bill of Entry was correct and it was not a case of showing excessive value. It is also observed by the Tribunal that when the goods are wholly exempt from customs duty, there could be no motive in misdeclaration of value. These are all questions of fact and when we find that the decision of the Tribunal is based upon the opinion of the expert body which had examined the goods in question as well as the price declared, we do not find any reason to interfere with the order of the Tribunal as no substantial question of law arises for consideration.

5. The appeal is, accordingly, dismissed.