(2014) 09 DEL CK 0350

In the Delhi High Court

Case No : CUSAA No. 31/2014

Commissioner of Customs APPELLANT

Vs

Dejero Logix Pvt. Ltd. RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:
Customs Act, 1962 — Section 112(a), 130

Citation : (2014) 310 ELT 254 : (2015) 30 GSTR 114

Hon'ble Judges : V. Kameswar Rao, J;Sanjiv Khanna, J

Bench : Division Bench

Advocate : Satish Kumar, Sr. Standing Counsel, Advocate for the Appellant

Judgement

V. Kameswar Rao, J.—The present appeal has been filed by the Commissioner of Customs u/s 130 of the Customs Act, 1962 challenging the order of the Customs, Excise and Service Tax Appellate Tribunal (''Tribunal'', in short) dated January 29, 2014 whereby the Tribunal has allowed the appeal filed by the respondent-herein against the order-in- original dated October 25, 2012 of the Commissioner of Customs (I and G) confiscating the goods imported by the respondent without any requisite licence from the DGFT and WPC (Ministry of Telecommunication and Information Technology) and further imposing a penalty of Rs. 5 lakhs u/s 112(a) of the Customs Act, 1962 (Act, in short).

2. The relevant facts in brief are that the respondent had filed bill of entry No. 7687005 dated August 17, 2012 for clearance of goods declared as "Transmitter Broadcasting Equipment Sub-system (Data Processing Unit with transmitting capabilities for broadcasting), software and other standard accessories " which were valued at US Dollar 91,500. The assessable value of the goods worked out to be Rs. 51,70,619/-. On examination, to ascertain the correct nature of the goods by the Examination Officer, it was found that the goods under import were live+ transmitter for the live television broadcasting and not broadcasting equipment Sub-system as declared by the respondent. As per ITC (HS) classification of export and import items, the import of T.V. broadcast transmitter

was/is restricted and not permitted to be imported, except against a licence to be issued by the WPC Wing of Ministry of Telecommunication and Information Technology.

3. It was the case of the respondent before the Commissioner that the equipment imported is meant for one to one communication between the field reporter and studio. The signal is captured by devices such as Cameras (not part of the equipment), relayed to the studio with this device with the help of GSM Cellular network. The studio processes the signals and broadcasts to the audience. Thus, the device is merely a communication part using the GSM network for transmission and thus, may be classified as CTH 8517. The Commissioner, after considering an independent opinion submitted by the respondent and considering the general rules of interpretation was of the following view:

"3.5. After perusal of the catalogue, technical literature and independent opinion from Shri Arun Goyal, Director of M/s. Academy of Business Studies, New Delhi, juxtaposed against the technical literature, catalogue and wording of the tariff heading 8525 5030, 8517 62, 8525 5020 and the General Rules of Interpretation, I find that the correct and most suitable classification of the impugned goods would be under CTH 8525 5020 which provides for "TV broadcast transmitter under the main heading of "Transmission apparatus.

I also find that the impugned goods are specifically for transmission purpose and not for one to one communication. The device is essentially a standalone piece which is between front-end (camera etc.) and back end (studio). Essentially the equipment is meant for transmission of live video between the field reporter and studio. The signal is captured by devices such as cameras (not part of this equipment), which get relayed to the studio which this device with the help of GSM Cellular network. At the other end, the studio (not part of this equipment) processes the signals and broadcasts to the audience.

As per General Rules of Interpretation 2 and 3, the impugned goods carry the essential character of transmission and are classifiable specifically under CTH 8525 5020 being complete equipment self- capable of transmitting the live video for the ultimate purpose of broadcasting ".

4. In appeal, the case of the respondent was on similar lines as was before the Commissioner. It is also the case that every transmission is not video or T.V. broadcast. The respondent relied upon the McGraw Hill Encyclopaedia of Science and Technology to contend the word "Broadcast " means the transmission of the radio and television programmes that are intended for general public reception as distinguished from private signals that are directed to specific receivers and the equipment is incapable of transmitting audio or video signal directly for reception by the general public.

5. The Tribunal relying upon the findings of the Commissioner in para 3.5 of the impugned order, which has already been reproduced above, was of the view that

the equipment is merely for transmission of audio-video signals by a reporter from some place to his studio through GSM cellular network and it is from the studio, that the audio-video recording is broadcasted to the public. The equipment could not be used for broadcast i.e. broadcast to the public. The Tribunal referred to technical literature according to which, the equipment gives a person the flexibility to either broadcast live programmes to the studio or to live + broadcast server or live+ streaming server. It was also the conclusion that the equipment imported is neither a radio broadcast equipment nor T.V. broadcast transmitter and every transmitter is not a transmitter for public reception. According to the Tribunal, the equipment is only for transmitting audio-video signal from one place to another and not capable of transmitting the signals to be received by the general public and set aside the order-in-original.

6. Mr.Satish Kumar, learned standing counsel for the appellant would reiterate the stand of the appellant before the Tribunal and contend that the equipment imported is a Television broadcast transmitter and as per the import policy, the same is restricted item only permitted to be imported against a licence to be issued by the WPC Wing, Ministry of Telecommunication and Information Technology.

7. Having considered the submission made by Mr. Satish Kumar and on perusal of the conclusion arrived at by the Commissioner as well as by the Tribunal, it is apparent that the equipment is meant for one to one communication between the field and the studio with the help of GSM cellular network. It is at the studio that the signals are processed for the broadcast to the audience at large. In other words, the usage of the equipment is for transmitting the audio-video signals till the studio and not beyond that would necessarily suggest, the broadcasting from the studio to the public at large is done by a separate set of equipment available at the studio. The aspect of usage/function of the equipment, imported is a pure question of fact and no substantial question of law arises for the consideration of this Court in this appeal. Even on the aspect of perversity, we find the appellant has not placed along with the appeal, the copy of the literature relating to the equipment. We do not think, it is a fit case for this Court to interfere with the impugned order. The appeal is dismissed with no order as to costs.

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In view of the order passed in the appeal, the application is dismissed as infructuous.