(2002) 10 SC CK 0026

In the Supreme Court Of India

Case No : Civil Appeal No. 4089 Of 1995

HCL Ltd. APPELLANT

Vs

Collector of Central Excise RESPONDENT

Date of Decision : 10-10-2002

Acts Referred:

Citation : (2003) 85 ECC 305 : (2002) 146 ELT 261 : (2003) 9 SCC 64

Hon'ble Judges : S. N. Variava, J;Brijesh Kumar, J

Bench : Division Bench

Advocate : A.R. Madhav Rao, V. Lakshmikumaran, Alok Yadav, Vishwanath Shukla and V. Balachandran, for the Appellant; Yashank Adhyaru Dilip Tandon, K.C. Kaushik and B. Krishna Prasad, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is against the decision of the Customs, Excise & Gold (Control) Appellate Tribunal dated 29th March, 1993.

2. The appellants are manufacturers of Micro Film Reader Printer (for short "MFRP"). It is an admitted position that MFRP would fall under Item No. 33D which reads as follows :

ITEM NO. 33D- OFFICE MACHINES AND APPARATUS

Item No. Tariff Description +Rate of duty

33D Office machine and apparatus, including typewriters, calculating machines, cash registers, cheque writing machines, accounting machines, statistical machines, intercom-devices (but excluding telephones), tele-printers and auxiliary machines for use with such machines, whether in assembled or unassembled condition, not elsewhere specified. Explanation- The term "office machines and apparatus" shall be construed so as to include all machines and apparatus used in offices, shops, factories, workshops, educational institutions, railway stations, hotels and restaurants for doing office work, for doing office work, for data processing and for transmission and reception of messages. + Special excise duty @ 5% of the basic duty chargeable vide Notification No. 128/85-C.E., dated 24-5-1985. Twenty percent ad valorem.

3. By Notification No. 51/70-CE., dated 1st March, 1970 as amended by Notification Nos. 129/71-CE., dated 3rd July, 1971 and 49/76-C.E., dated 16th March, 1976, exemption from whole of the duty was given to office machines and apparatus falling under Item No. 33D provided they were other than those specified in the Schedule. The Schedule reads as follows :

"THE SCHEDULE

1. Typewriters including those incorporating calculating device. 2. Cheque writing machines. 3. Teleprinters. 4. Calculating machines. 5. Accounting machines. 6. Cash registering machines (whether known as cash registers or by any other name). 7. Postage-franking machines. 8. Automatic vending machines including ticket issuing machines. 9. Totalisers. 10. Statistical machines including sorting and tabulating machines. 11. Punching machines. 12. Checking machines. 13. Reproducing machines. 14. Interpreting machines 15. Hectograph or stencil duplicating machines. 16. Addressing machines. 17. Coin sorting machines. 18. Coin counting machines. 18A. Coin wrapping machines. 19. Perforating machines. 19A. Stapling machines. 20. Letter folding machines. 21. Letter opening machines. 21A. Letter closing or sealing machines. 22. Stamp cancelling machines. 23. Machines for delivering wrapping paper or gummed tape. 24. Machines for moistening gummed paper or stamps. 25. Paper shredders of a kind used for destroying confidential waste. 26. Dictating machines. 27. Intercom-devices. 28. Photo copying machines. 29. Time recording machines. 29A. Attendance machines. 30. Data Processing machines other than Computers (including Central Processing Units and peripheral devices). 31. Electronic Stencil Scanners.

Explanation - In the Schedule to this notification, office machine or apparatus includes an office machine or apparatus which may, in addition to its own function, be used for performing the functions of two or more machines or apparatus specified therein."

4. The appellants claimed exemption under this Notification for their MFRP. This exemption was denied to them by the Assistant Collector on the ground that they fell under Item No. 13 i.e. a reproducing machine. In appeal the Collector of Central Excise, by his order dated 31st May, 1990, allowed the claim of the appellants. The respondent then filed an appeal before the Customs Excise & Gold (Control) Appellate Tribunal which by the impugned order has disallowed the claim. It has been held that MFRP is a reproducing machine as well as a photocopying machine.

5. We have heard the parties. It is an admitted position that the machine of the appellants reads what is stored on a micro film and can also print out what has been stored on a micro film in the same condition as if the print were an original.

We are in agreement with the finding that such a machine is a reproducing machine. It being a reproducing machine, the appellants are not entitled to the benefit of the Notification.

6. We, therefore, see no infirmity in the impugned judgment. The appeal is dismissed accordingly. There will be no order as to costs.

