CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

Appeal Nos.C/199 to 201/2012

[Arising out of Order-in-Appeal No.468 & 469/2012 dt. 11.06.2012 passed by Commissioner of Customs (Appeals), Chennai]

Redington (India) Ltd. Appellant

Versus

Commissioner of Customs (Airport & Cargo)
Chennai Respondent

Appearance :

Shri Ajay Kumar Gupta, Advocate
For the Appellant

Shri A. Cletus, ADC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 23.04.2018

FINAL ORDER No. 41328-41330 / 2018

Per Bench

As the issue involved in these appeals being common, we take up the appeals together for hearing and disposal.

2. The facts of the case are that appellants had filed Bill of Entry for the clearance of Cogent Lifescan for Finger Print Scanner classifying the same under Customs Tariff Heading 84716050 eligible for 'Nil' Basic Customs Duty (BCD). However, at the time of assessment, department assessed the same under CTH 85437099 under residual heading of 'Electrical Machines and Apparatus having individual functions not specified or included elsewhere in Chapter 84 & 85. Appellants preferred appeals with the Commissioner (Appeals) who vide the impugned orders has upheld the assessment and rejected the appeals. Hence the appellants are before this forum

3. Today when the matter came up for hearing, on behalf of appellants, Ld. Advocate Shri Ajay Kumar Gupta made oral and written submissions which can be broadly summarized as under :

(i) The items imported by them are scanners which are designed to be operated and used along with Automatic Data Processing machine, hence would merit classification only under CTH 84716050.

(ii) The impugned items are designed only to transmit signals to the ADP machine, hence it cannot function independently.

(iii) Identical issue has been decided by the Tribunal in the case of *STJ Electronics Pvt. Ltd. Vs CC New Delhi* - 2016 (2) TMI 141 –

CESTAT New Delhi where similar finger printer scanners were held to be classifiable only under CTH 8471.

4. On the other hand, Ld. A.R Shri A. Cletus opposes the appeals and supports the impugned order. He submits that the catalogues or technical write up were not produced by the appellants. He draws our attention to para-6 of the impugned orders to point out that in the absence of the catalogue or technical write up the Commissioner (Appeals) had to make searches on the internet and accordingly he found that the scanning devices are stand alone equipments capable of working independently. Hence these are machines having individual functions that can work without attaching Automatic Data Processing machine, therefore they would merit classification only in the residual entry 85437099.

5. Heard both sides and have gone through the facts.

6. No doubt, the Commissioner (Appeals), in para-6 of the impugned order has made an observation that since appellant having not produced the catalogue or technical write up, he had to search internet to know more about scanners. However, from the narration given in para 6, we find that the lower appellate authority has searched the internet merely for “Life Scan Finger Print Devices” and not the ‘Cogent Lifescan Finger print Scanner’ and based on the

information that popped up, has arrived at a facile conclusion that the finger print scanners are having independent memory and are capable of having functioning of their own. On the other hand, from the compilation submitted by the Ld. Advocate, we note that the website of the foreign manufacturer itself contains the catalogue and the write ups of the impugned items, copies of which have been placed at page 10 to 12 of the compilations submitted today. In any case, nothing prevented the department from obtaining an expert opinion at the very point of import or for that matter, ask for technical write up or catalogues before the assessment order was issued. We also find that the Tribunal decision cited by the Ld. advocate in the case of *STJ Electronics Pvt. Ltd* (supra) is on all fours with the dispute in appeal before us and we find that the ratio of that decision will squarely apply to these appeals also. In the circumstances, we find in favour of the appellant. Impugned orders cannot then be sustained and are required to be set aside, which we hereby do. Appeals are allowed with consequential relief, if any, as per law.

(dictated and pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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