CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNALSOUTH ZONAL BENCH CHENNAI

Appeal No.C/384/2006

[Arising out of Order-in-Appeal No.C.Cus.466/2006 dt. 16.6.2006 passed by the Commissioner of Customs, Chennai (Appeals), Chennai]

Prasad Corporation — Appellant

Versus

Commissioner of Customs,
Chennai — Respondent

Appearance:

Shri T. Sundaranathan, Advocate
For the Appellant

Shri B. Balamurugan, AC (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 : 21.07.2017

FINAL ORDER No. 41385/2017

PerBench

The facts of the case are that appellants imported goods declared as Discreet Lustre Master Station, consisting of computer system, storage devices, PCB cards and claimed classification of the same as automatic data processing equipment under CTH 84713090.

They claimed benefit of notification 24/05 at nil BCD and CVD @ 7% under 76/2004. On examination under first check, it was reported that the goods consisted of 2 sets of Discreet Lustre Master Station (colour corrector) which consisted of a Generic Control Panel device, IBM.SCSI hard disc, IBM z-pro, DVS Centaurus audio 08, storage devices,chasses with Raid, two nos. of upgrade HBA kits, pen drivers, tablets etc. It was opined by the examination staff that as per the technical write up provided, the goods were computerized colour grading system and classifiable under CTH 85438960 as "Colour Correctors. In adjudication proceedings, original authority vide an order dt. 04.01.2006 rejected the request of the importer to treat the items as automatic digital processing machines and instead held that the imported goods are colour correctors specifically designed for a particular primary function and which find a specific entry at CTH 85438960 chargeable to duty under appropriate merit rate of duty. In appeal, the Commissioner (Appeals) vide impugned order dt. 16.6.2006, while holding that the colour correctors imported would be classifiable under CTH 847170 irrespective of equipment with which they have been imported, however upheld the order of original authority in respect of the classification of Discreet Lustre Master Station under, CTH 85438960. Aggrieved, appellants are before this forum.

2. On 21.07.2017, when the matter came up for hearing on behalf of appellant, Ld. Advocate T.Sundaranathan made oral submissions which can be summarized as under :

(i) Computerized colour grading system is not a film machine nor is there any place to put the film inside. They put the film on the machine bench and the operator then colour grades the film. The computerized colour grading system does not process the data at all. The operator analyzes the film by putting the film into the machine and a computer is used only to control the machine, hence it is only computerized colour grading system.

(ii) Ld. Advocate draws attention to technical write up in respect of the imported goods sent by e-mail by Shri S.Sai Prasad, Director from the U.S.A which has been submitted at page 12 of the appeal. The imported item is therefore only an automatic data processing machine employing software which does not directly deal with, or process exposed cinematographic colour films. On the other hand, automatic data processing with the help of the software processes only the material in which movies are loaded or recorded in digitalized form in the condition as it has been imported does not merit classification under CTH 8543 but as an automatic data processing machine under appropriate heading CTH 8471.

3. On the other hand, Ld.A.R supports the impugned order. He further draws attention to the tariff heading, CTH 8471. He submits

that contention of appellant that the items should fall under,CTH 84713090 is not correct, since the parental sub heading,CTH 847130 only covers portable automatic data processing machine, weighing not more than 10 kgs.,consisting of at least a central processing unit, a key board and a display. He submits that colour correctors have a specificand separate heading in CTH 84438960 and the department has established that the impugned item is nothing but a colour corrector and hence requires to be classified under CTH 84438960. He contends that appellants had sought to misclassify the item wrongly, only to claim the benefit of rate of customs duty under Notification No.24/2005 which provides for Nil rate of BCD and 7% CVD for goods falling under CTH 8471.

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

4.1 The issue that comes up for decision is whether the lower appellate authority's order upholding of classification of Discreet Lustre Master Station imported by the appellant under CTH, 85438960 is correct or whether the goods are required to be classified under CTH, 87413090 as claimed by appellant.

4.2 For a better appreciation of the issue at hand, it would be useful to reproduce the tariff entries as it occurred during the relevant period. The contesting tariff entries are as under :

Tariff item		Description of goods	Unit	Rate of duty	
				Standard	Preferential Areas
8471		**Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data on to data media in coded form and machines for processing such data, not elsewhere specified or included**			
8471 30	-	*Portable automatic data processing machines, weighing not more than 10 kgs., consisting of at least a central processing unit, a keyboard and a display;*			
8471 30 10	---	Personal computer	u	Free	-
8471 30 90	---	Other	u	Free	-

Tariff item		Description of goods	Unit	Rate of duty	
				Standard	Preferential Areas
8543		**Electrical machines and apparatus having individual functions, not specified or included elsewhere in this chapter**			
....		.....	.....	....	...
	---	*Edit control unit :*			
8543 89 51	----	Computerised editing system controlling more than three video editing machines	u	15%	-
8543 89 52	----	Other video control units	u	15%	-
8543 89 59	----	Other	u	15%	-
8543 89 60	----	Colour correctors	u	15%	-

4.3 At stake is the eligibility to avail exemption granted to specified goods from the whole of customs duty vide Notification No.25/2005-Cus. dt.01.03.2005. It is seen that the goods falling under CTH 8471 have been included for the notification benefit. CTH 85438960 does not find a place.

4.4 It is seen that the appellants have claimed classification under CTH 84713090 which is a "three dash" sub-heading under a "single dash" sub-heading 847130 which seeks to classify portable automatic data processing machines, weighing not **more than 10 kgs.** and consisting of a central processing unit, a key board and a display. Discernably, for an item to merit classification under 84713090, it has necessarily to be an automatic data processing machine, which is portable and which weighs less than 10 kgs.

4.5 The scope of "automatic data processing machine" has been elucidated in Chapter Notes 5A to 5E of, Chapter 84 of the first Schedule to the CTA 1975 as follows :

> **"5.(A) For the purposes of heading 8471, the expression "automatic data processing machines" means:**
>
> **(a) digitial machines, capable of (1) storing the processing programme or programmes and at least the data immediately necessary for the execution of the programme; (2) being freely programmed in accordance with the requirements of the user; (3) performing arithmetical computations specified by the user; and (4) executing, without human intervention, a processing programme which requires them to modify their execution, by logical decision during the processing run;**

(b) analogue machines capable of simulating mathematical models and comprising at least; analogue elements, control elements and programming elements;

(c) hybrid machines consisting of either a digital machine with analogue elements or an analogue machine with digital elements.

(B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all of the following conditions:

(a) it is of a kind solely or principally used in an automatic data processing system;

(b) it is connectable to the central processing unit either directly or through one or more other units; and

(c) it is able to accept or deliver data in a form (codes or signals) which can be used by the system.

(C) Separately presented units of an automatic data processing machine are to be classified in heading 8471.

(D) Printers, keyboards, X-Y co-ordinate input devices and disk storage units which satisfy the conditions of paragraphs (B) (b) and (B) (c) above, are in all cases to be classified as units of heading 8471.

(E) Machines performing a specific function other than data processing and incorporating or working in conjuction with an automatic data processing machine are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings."

[emphasis added]

From these Chapter Notes, it can be interpreted that in case specific function of the item is other than data processing, however, item incorporates or works in conjunction with automatic data processing machine, such a machine is to be classified in the headings appropriated to the respective functions. This interpretation is further reinforced by Note 7, in Chapter 84 which clarifies that ***"A machine which is used for more than one purpose, is, for the purpose of classification, to be treated as if its principal purposes were its sole purpose***".

4.6 Section Notes 3, 4, & 5 to Section XVI of the Schedule lays down Interpretative Rules for the entire Section which includes Chapter 84 and Chapter 85. These section notes are reproduced below :

> **"3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.**
>
> **4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function.**
>
> **5. For the purposes of these Notes, the expression "machine" means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85."**

4.7 From a combined reading of the above Chapter notes and Section notes, it can be concluded that in the case of a machine involving a combination of machines or a combination of individual components which together perform a clearly defined function, then the whole machine will require to be classified in the heading appropriate to that function.

4.8 From the facts on hand, it is seen that catalogues were found inside the packages of the goods declared as "Discreet Lustre Master Station". The product details in the catalogue as brought out by the original authority's order dt. 4.1.2006 seen at page 19 of the appeal filed is as follows :

> "The catalogue taken from the packages shows that the items under import are "discreet luster master station (color corrector) and it is stated in the catalogue that;
>
> 1) Discreet Lustre* 2.6 Colour grading system is the ultimate high performance solution for interaction film grading and look creations. And
>
> 2) Lustre Master station provides a high performance all-in-one solution for digital grading."

4.9 Further analysis of the product literature has been made by the original authority as follows :

> "Further study of the literature produced shows that the system's unique and extreme powerful 32 bit / software engine offers superior performance and image quality which is ideal for grading digital interrelates and film scan at any retroaction, including 2K and 4K. The main features at a glance is that the Real time primary color grading of 10 and 16 bit 2K scans, extensive selective color correction tools etc.,
>
> What is understood from the above is that the item under import is a colour grading system, discreet luster master station (color corrector), consisting of:
>
> IBM servers, Colour monitor, DVS Centaurs audio08, storage devices Generic control panel device and others. The item under import is a unit, which is

used for grading digital intermediates, in this case a digital film (Digital Cinema).

Also the catalogue clearly states that the items under import are "Designed to meet the highly specialized needs of directors of photography and colorists, Lustre provides with concepts, intuitive tools and the unique ability to fully participate in colour grading and look design as part of the digital intermediates process". (*Emphasis added*)

The features of the system includes apart from others, primary Colour correction, selective Colour correction, continually grading and grade editor vector shapes and tracking, effects, Quality control, Animation, play back, video capabilities pan and scan, conforming and editing. The write-up deals more elaborately on the features of the system.

Web down loaded IBM cite shows that, Intellistations provide for some of the world's highly regarded editing, composting and furnishing systems and the work stations are used as exclusive platforms."

4.10 Evidently, the item under import is designed for a specific functionality relating to grading of digital intermediates in digital cinema. The features of this system include primary and selective colour correction, continual grading and grade editor, vector shapes and tracking effects, animation, playback, video capabilities - pan and scan, conforming and editing. As correctly observed by the lower appellate authority, M/s. Autodesk had specifically designed the generic panel device for the above purposes, Similarly DVS Centaurus audio video devices were designed to perform a specific function which a normal data processing machine would not contain.

Hence the impugned goods will necessarily go out of the scope of CTH 84713090.

4.11 Further, as already seen, for an imported item to be included in the entry CTH 84713090, it should be an automatic data processing machine, which is portable and weighing less than 10 kgs. However, a perusal of Bill of Entry No.951534 dt. 11.11.2005, available on page 11 of the appeal file, reveals that the items described as "Discreet Lustre Master Station" was imported for value of US$ 208390, with country of origin, Canada and with a gross weight of 581.000 kgs. Even after making very liberal allowances for the weight of the accompanying packing and protective material, the imported goods will obviously still weigh much beyond the 10 kgs.cap to be eligible for classification under CTH 84713090. Hence even this aspect, it appears that the impugned item will not fit into the scope of CTH "double dash" entry 843130 and the subsequent "triple dash" entry of 84713090.

4.12 We find that both the lower authorities have thoroughly analyzed the scope and performance of the imported goods and have found that the said equipment was unique and ideal for grading digital entry relates and films scan retroactive goods were clearly shown to have been designed. Lower appellate authority in particular has in page 12 of the impugned order found that:

> "The goods were clearly shown to have been designed to meet the highly specialized needs of Directors of photography and colorists, that it include features such as primary and selective color correction, grading, tracking, effects, animation, playback, video capabilities such as pan and scan, conforming and editing etc. It was also brought out how some of the equipments such as IBM Intellistations and some of the cards such as the Centaurus, SD stations, NVIDIA QUADRO graphics accelerator cards and generic control panel etc were all specialized equipment tailor made for editing, composing and other highly specialized uses in the field of video film color correction and manipulation. These averments have been strongly backed by a large number of catalogues / brochures of these proprietary products, which have all apparently been brought together by the manufacturers – M/s. Autodesk under the umbrella of the 'Discreet lustre master station'. The specialized and specific nature of the goods under import was shown to be the reason why the goods could not be classified merely as an automatic data processing machine or as computer peripherals. Reliance has also been placed on Note 5(E) of Chapter 84 which defines what goods would not fall under automatic data processing machines and Chapter Note 7 to show that machines that have specific functions or purposes other than data processing would fall to be classified under heading appropriate to their respective functions or under their residual headings."

4.13 What clearly emerges therefore, is that though the imported goods may well have a high performance IBM CPU (server) with advanced key boards and although the equipment may have many of the elements of an automotive data processing machine,nonetheless, they are specifically designed to perform a specific function other than data processing, namely, that of performing high end task of colour gradation/correction. Hence the classification of the goods will then be governed by Section notes 3 & 4 of the first Schedule to CTA read with Chapter Note 5E of Chapter 84, and the imported goods will then have to be considered as a machine intended to contribute together to a clearly defined function covered by heading 85438960 as a colour corrector.

5. In the event, we are unable to find any infirmity in the impugned order of lower appellate authority upholding of classification of the impugned goods under CTH 84438960 having the primary function of colour corrector. No merit is therefore found in the appeal for which the same is dismissed.

(Operative part of the order pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

Sulekha Beevi

(SulekhaBeevi C.S)
Member (Judicial)

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Customs, Excise & Service Tax Appellate Tribunal

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