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

C/560/2006

(Arising out of Order-in-Appeal C. Cus. No.665/2006 dated 12.9.2006 passed by the Commissioner of Customs (Appeals), Chennai)

Commissioner of Customs, Chennai Appellant

Vs.

M/s. Ingram Micro (I) Pvt. Ltd. Respondent

Appearance

Shri B. Balamurugan, AC (AR) for the Appellant
None for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing / Decision: **23.06.2017**

Final Order No. 41636/2017

Per Bench

The brief facts are that the respondents imported combo drives (SOHC 1673S and SOHC 5236K) for the value of Rs.44,03,159.16 and claimed benefit of Notification No.6/2006-CE dated 1.3.2006 wherein the rate of duty was nil. The goods were already exempted from basic customs duty vide Customs Notification No. 24/2005 Sl.No.2. On assessment, department denied the exemption as per

Notification No. 6/2006 and therefore the respondents were charged with CVD, cess and additional import duty. Though the respondent requested for reassessment of the Bill of Entry, they were directed to file appeal and hence the respondents filed an appeal before the Commissioner (Appeals). Vide the order impugned, the Commissioner (Appeals) allowed the appeal of the respondents and thus directed to reassess the Bill of Entry holding that the respondents are eligible for the benefit of Notification No. 6/2006. Being aggrieved, the department is now before the Tribunal.

2. The learned AR Shri B. Balamurugan reiterated the grounds of appeal. He submitted that the exemption under Sl. No. 17(g) of Notification No. 6/2006 was eligible only for goods which are combination of goods from Sl. Nos. (a) to (f) of the said Notification. That this was as per the directions of higher formations and since the goods imported by the respondents do not contain all the elements of (a) to (f) of Sl. No. 17, they are not eligible for the benefit of notification.

3. None appeared for the respondents though notice was issued and the matter was taken up for disposal after hearing the learned AR as well as on perusal of records.

4. On perusal of the records, items listed under Sl. No. 17 of the Notification are as under:-

(a) Microprocessor
(b) Floppy disc drive

(c) Hard disc drive
(d) CD-ROM Drive
(e) DVD Drive
(f) USB flash memory
(g) Combo drive

5. The case of that department is that in order to become eligible for exemption, the combo drive should contain all the elements from (a) to (f) appearing in the list above. The strong contention put forward in the appeal is that this view was taken after discussion with higher formation and that the Commissioner (Appeals) did not give sufficient opportunity to the department to produce information / data regarding such view taken by higher formations. In para 6 of the impugned order, it is noted by the Commissioner (Appeals), wherein he has directed the department to produce written clarification or circular / letter in support of the contention that such view is taken by higher formations. The department was not able to produce any such documents. At the time of hearing the stay application also, the very same contention was taken up by the department and Tribunal has noted this contention in the order passed in the stay application dated 19.3.2007, wherein the stay application was dismissed. In the said order, the Tribunal has noted that during the pendency of the appeal, the department shall produce circular/instructions, to support their contention, that such view is taken by higher formations. But till date, the department has not been able to produce any

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such circular / letter. This apart, it is seen that the Commissioner (Appeals) has elaborately discussed the eligibility of the Notification for the impugned goods. The relevant paragraphs are reproduced as under:-

> *"16. Coming to the goods imported by the appellants it is seen that both the SHOW 16763S as well as SOHC 5236K drives are capable of use in both the CD and DVD formats and are each capable of several such applications as listed in the preceding paragraphs. They are both capable of writing as well as rewriting and reading in the CD as well as DVD formats. It is also seen that these goods have been defined as combo drives by the manufacturers as well as in the popular sense as is evident from the websites and are acknowledged as such. Therefore the departments averment that a combo drive would have to contain all the items listed in the SI.No.17(a) to (f) does not appear to be correct. The items listed in SI.No.17 (a) to (g) are*
>
> *(a) Microprocessor,*
> *(b) Floppy disc drive,*
> *(c) hard disc drive,*
> *(d) CD Rom Drive,*
> *(e) DVD drive and*
> *(f) USB flash memory.*
> *(g) Combo drive*
>
> *17. Except for the CD Rom drive and DVD drive, I do not find any reference in the vast literature available in the public domain on the internet that a combo drive would have to contain of microprocessor or USB flash memory or for that matter a floppy disc drive or hard disc drive. It appears to be absurd to suggest that a combo drive should contain a microprocessor and USB flash memory. Therefore the averment of the department that a combo drive should compose of items (a) to (f) of SI.No.17 appears to be unacceptable. Moreover during the personal hearing the representative of the respondent has accepted that the said instructions from the "higher formation" of the department (Boards office) has not been given in writing and thus cannot have the force of law for lack of legal backing."*

6. We, therefore, do not find any ground to interfere with the finding of fact recorded by the lower appellate authority

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that the combo drives are eligible for concession of duty as per Notification No. 6/2006. The appeal is devoid of merits and the same is dismissed.

(Operative portion of the order was pronounced in open court)

(V. PADMANABHAN)
Member (Technical)

(SULEKHA BEEVI C.S.)
Member (Judicial)

Rex

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सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (CESTAT)
चेन्नै / Chennai

Customs, Excise & Service Tax Appellate Tribunal