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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/67 /2006 - CU[DB] Date 11/12/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S SGS INDIA PVT. LIMITED
ADI SHANKARCHARYA MARG,
VIKHORDLI WEST MUMBAI

M/S SGS INDIA PVT. LIMITED Appellant

Vs

COMMISSIONER OF CUSTOMS (I & G) Respondent

I am directed to transmit herewith a certified copy of Final order No. C/660/08-CUS. DATED 05.12.08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
COMMISSIONER OF CUSTOMS (I & G)
NEW CUSTOM HOUSE NEAR IGI AIRPORT
NEW DELHI - 110 037
2. Adv. / Consult MR.MOHAN LAL, B-67,
FLATTED FACTORIES COMPLEX,
OKHLA PHASE-III,N DELHI

3 S.D.R
4 J.C.D.R.
5 Bar association. CESTAT. New Delhi
6 M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 Nidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35. West Punjabi Bagh. New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 Office Copy
16 Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Customs Appeal No. 67 of 2006

[Arising out of Order-in-Appeal No. No.CC(A)/426/ACU/ Delhi-1/2005 dated 27.10.05 passed by Commissioner of Customs (Appeals), Delhi]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K.Das, Member (Judicial)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : NO
2. Whether it should be released under Rule 27: of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? Yes
3. Whether Their Lordships wish to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : Yes

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M/s. SGS India Pvt. Ltd. Appellants

Vs.

Commissioner of Customs Respondent
New Delhi

Appearance:

Mr. Mohan Lal, Advocate for the Appellants
Mr. Sunil Kumar, DR for the Respondent

CORAM:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K.Das, Member (Judicial)

Date of Hearing/Decision: 5.12.2008

Final **ORDER NO. C/660/08**

Per M. Veeraiyan (for the Bench):

This is an appeal against the order of the Commissioner No.CC(A)/426/ACU/Delhi-1/2005 dated 27.10.05.

2. Heard both sides.

3.1 The appellant filed Bill of Entry dated 22.12.04 for clearance of 43 numbers of IBM CPUs seeking classification under 84719000 and 43 numbers of flat Monitors seeking classification under CTH 9013.8010 and the assessment was completed as claimed by the appellant and clearance was allowed.

3.2 The appellant filed appeal against the assessment order before the Commissioner (appeals) and submitted that the classification claimed by them for monitors was wrong; that they have placed orders for desk top computers which included CPUs, Monitors, mouses and keyboards and therefore, the entire goods covered by the said bill of entry should be classified only as a computer set and granted exemption under Serial No. 2 of Notification No. 76/04 and the rate of additional duty to be applied should be 7% only.

4. Commissioner (Appeals) conceded the claim for revision of classification for the monitor. However, he held that there was no evidence that mouse and key board had also been imported, therefore, he denied the exemption sought for.

5. Learned advocate submits that they produced documents like the purchase order, catalogue and letter from the supplier in

support of their claim that Key placed order for desk top computer and that they also imported mouse and keyboard. However, Commissioner (Appeals) did not accept the said evidnce. He alternatively submitted that CPU as such has to be treated as a computer and shall be eligible for exemption under Serial No. 1 of the Notification 76/2004.

6. Learned DR submits that the Commissioner (Appeals) have gone by the examination report which indicted presence of CPUs and monitors only. No reliance can be placed on catalogue, as all the items listed therein may not be imported. He also submits that appellant had not claimed the benefit of Notification No. 76/04 exclusively for CPUs and therefore Commissioner (Appeals) had no occasion to consider the same.

7. We have carefully considered the submissions from both sides. We hold that the catalogue cannot be relied upon to come to a conclusion that the entire items mentioned therein have been imported. The appellant has filed Bill of Entry only for 43 numbers of CPUs and 43 numbers of Monitors and the packing list produced was also to that effect. If Keyboards were also supplied, normally, same would have been mentioned separately in the packing list. They are not small items like the mouse which could be, perhaps, put in other packets. At any rate, reliance placed by Commissioner (Appeals) on the examination report to conclude only CPUs and monitors have been imported appears reasonable and therefore, there is no warrant to interfere with the said finding.

8. However, the claim of the learned advocate for the benefit of notification No. 76/04 in respect of CPUs alone deserves to be considered. This claim was not considered at the earlier stages as the appellant has not claimed such benefit exclusively for CPUs.

9. In the interest of justice, we remand the matter to the original authority for the limited purpose of examining the claim of exemption for CPUs in terms of Serial No. 1 of Notification No. 76/2004. The original authority shall give reasonable opportunity of personal hearing to the appellant before deciding the issue.

10. The appeal is disposed of on the above terms.

(Dictated & Pronounced in the open Court)

(... .ceraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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