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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/114 /2008,292 /2008-398 /2008 - CU[DB] Date 23/10/2008

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

To :
M/S DELL INDIA PVT. LTD.
DIVYASHREE GREENS,S.NO.12/A, 13/A,
13/2A,CHALLAGHATA VILLAGE,VARTHUR
HOBLI,BANGALORE-560009
M/S DELL INDIA PVT. LTD. Appellant
Vs
C.C. (ICD) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order** No. C/425to532/08 CU[DB] dated 7.10.08 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
   C.C. (ICD) NEW DELHI
   ICD, TUGHLAKABAD, NEW DELHI 110020.
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
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 & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

CUSTOMS APPEAL NO. 114 & 292 to 398 OF 2008

[Arising out of Order-in-Appeal No. CC(A)/Cus/ICD/D-II/199-305/07 dated 29.10.2007 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	

M/s. DELL India Pvt. Ltd. Appellants

Vs.

CC, New Delhi Respondent

Appearance:
Shri Ravi Raghavan, Advocate for the appellants;
Shri Sumit Kumar, Departmental Representative, for the Revenue;

Coram:
Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 7th October, 2008

FINAL ORDER NO. C/425 to 532/08 **dated** 7/10/08

Per S.S. Kang:

Heard both sides.

2. These appeals are filed against the common Order-in-Appeal, therefore, are being taken up together.

3. Brief facts of the case are that the appellants made import of Desk Top Computers. Various customers placed order with the appellants for purchase of Desk Top Computers. The appellants claimed benefit of Notification No. 6/2006 dated 1.3.2006 at the time of import which provides as under:-

S.No.	Chapter or heading Or sub-heading or Tariff item of the First Schedule	Description of excisable goods	Rate
16.	8471	"Computers **Explanation.** – For the purposes of this exemption, "computer" shall include central processing unit (CPU) cleared separately; or CPU with monitor, mouse and key board, cleared together as a set; but shall not include input or output devices or accessories such as monitor key board, mouse, modem, uninterrupted power supply system, or web camera cleared separately"	12%

Benefit of notification was allowed in respect of CPU and the benefit is denied in respect of monitor. The Commissioner (Appeals), in the impugned order, held that in the Bills of Entry, filed by the appellants, the items are mentioned separately, therefore, they are to be assessed separately under their Tariff Headings and denied the benefit of notification to the monitor.

4. Contention of the appellants is that various customers, such as Seimens Ltd. placed order for supply of Desk Top Computers and the same were imported by filing Bills of Entry wherein two items are mentioned, one is optiplex with Intel Pentium (CPU with key board and mouse). Second item is mentioned as flat panel (computer monitor). Contention is that as the computers were imported in sets, therefore, benefit of notification is available. The appellants relied upon the decision of the Tribunal in their own case i.e. Dell India Pvt. Ltd. vs. C.C., Bangalore, reported in 2008 (86) RLT 860 (CESTAT-Ban.) wherein benefit of notification No. 6/2006 was allowed in respect of monitors which were imported along with CPU.

5. Contention of the Revenue is that as monitors were mentioned separately in the Bills of Entry, therefore, the same are to be assessed separately. Revenue relied upon the Larger Bench decision of Tribunal in the case of Sony India Ltd. vs. C.C., ICD, New Delhi, reported in 2002 (143) ELT 411 and the decision of the Hon'b le Bombay High Court in the case of Glaxo Laboratories (India) Ltd. vs. UOI & Ors., reported in 1985 (21) ELT 72 (Bom.) to submit that the goods to be assessed as presented at the time of import.

6. We find that in the present case the appellants filed a Bill of Entry in respect of CPU, monitor, Key-board, & mouse. It is not the case of the Revenue that separate Bills of Entry are filed in respect of monitor. The case law relied upon by the Revenue are not applicable on the facts of the present case. In the case of Sony India Ltd. components were imported in to India under 94 different consignments over a period of 2 years. In this situation the Tribunal held that these are not to be assessed as complete T.V. sets. In other decision in the case of Glaxo Laboratories (India) Ltd. (supra) the Hon'ble Bombay High Court held that the end-use of an article is absolutely irrelevant for the purpose of its classification under a tariff entry where there is no reference to the end-use of the article in the entry itself. The article must be judged on the basis of its nature at the time of its importation. In the present case as the CPU, monitor, key-board and mouse have been imported and one Bill of Entry has been filed in respect of all these items, therefore, it cannot be said that the same have not been imported in sets. Explanation in the notification in question provides that concessional rate of duty is applicable to the computer and for the purpose of exemption computer shall include CPU separately; or CPU with monitor, mouse and key board, cleared together as a set. After taking into consideration the provisions of the Notification the Tribunal in the appellants' own case held that Monitor imported along with CPU are entitled to the benefit of notification No. 6/2006, the Tribunal held as under:-

"4.1 The lower authorities have not given the benefit of this Notification in respect of monitors imported along with CPU on the ground that monitors are separately classifiable under 85.28. We do not find that the stand of the department to be correct because the issue involved is only the applicability of the benefit of the Notification when CPU along with monitor, mouse and key board are cleared as a set. The reason for not extending the benefit of the Notification in respect of the monitor is that they are classified under 85.28 and the benefit of the exemption is available only to items classified under CH 84.71. They have also stated that the appellants had not claimed such benefits at the time of import. Another reason is that they themselves in their bill of entry indicated these items separately with separate classification. We have also gone through the impugned order of the Commissioner. On going through Para 11 and 12 of the impugned order, we find that he has not drawn the conclusions properly. For example, the last sentence of Para 11 reads as follows "In other words, even though the monitors are classified under 8528, the fact remains that they are cleared along with other items as a set and therefore, the benefit cannot be denied to these items which are classifiable under 84.71 viz., CPU, mouse and key board." After stating that the monitors are cleared along with other items as a set, he cannot deny the benefit only to monitors. There is absolutely no logic in his conclusion. While going through the explanation irrespective of classification of the monitor under 8528, the benefit of exemption or the benefit of concessional rate of duty is available to the monitors which are cleared along with CPU. IT does not matter that they are indicated separately in the invoices, separately in the bills of entry. So long as the goods are presented together, the benefit of exemption Notification should not be denied. Therefore, we hold that in respect of the monitors, which are imported along with the CPU, the benefit of exemption Notification No. 6/2006 dated 1.3.2006 is available."

7. In view of the earlier decision of the Tribunal in appellants' own case the impugned orders are set aside and appeals are allowed. The appellants are entitled for consequential relief, if any, in accordance with law.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 8th October, 2008

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