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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/2158/2005 - EX[DB] Date **09/08/2011**

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH Appellant

Vs

M/S AJNALI DIGITAL PVT.LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.720/ 2011 EX[DB]** dated 28-7-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S AJNALI DIGITAL PVT.LTD.
KASULI ROAD PARWANOO
DISTT SOLAN H.P.

2. Adv. / Consult
MR.MOHAN LAL
B-67,FLATTED FACTORIES COMPLEX,OKHLA PHASE-III,N DELHI

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:28.07.2011

Date of decision:28.07.2011

Excise Appeal No.E/2158 of 2005

[Arising out of Order-in-Appeal No.119/CE/CHD/2005 dated 31.03.2005 passed by the Commissioner of Central Excise (Appeals), Chandigarh].

CCE, Chandigarh Appellant

Vs.

Anjali Digital Pvt.Ltd. Respondent

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982. Yes

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? No

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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Appearance: Rep. by Shri R.K. Verma, DR for the appellant.
Rep. by Shri Mohan Lal, Advocate for the respondent.

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No.720/2011-EX./Dated: 28.07.2011

Per Justice R.M.S. Khandeparkar:

Heard DR for the appellant and Advocate for the respondent.

2. The present appeal arises from the Order dated 31.03.2005 passed by the Commissioner (Appeals), Chandigarh. By the impugned order, the appeal filed by the respondent against the order of the adjudicating authority was allowed and the classification of the product in question viz. "Add-on-Card" as claimed by the respondent to be classifiable under Heading No.84.73 of the Central Excise Tariff Act, 1985 was accepted solely on the basis of the decision of the Tribunal in the matter of Vintron Electronics P. Ltd. Vs. Commissioner of Central Excise, New Delhi reported in 2003 (151) ELT 589 (Tribunal-Delhi).

3. The dispute between the parties relates to the classification of the computer components – "Add-on-Cards" while the Department's case is that the item is classifiable under Chapter Heading No.84.71 whereas it is the contention of the assessee that the same is classifiable under Heading No.84.73. It is true that the Tribunal in Vintron Electronics case (supra) had held that the said product was classifiable under Heading No.84.73 as claimed by the assessee. However, the matter was further carried before the

Apex Court and therein the Apex Court had stayed the order passed by the Tribunal in Vintron Electronics case. Obviously, therefore, the Commissioner (Appeals) could not have decided the appeal solely on the basis of the order passed by the Tribunal in Vintron Electronics case. The order of the Hon'ble Supreme Court in Vintron Electronics Pvt. Ltd. Vs. Commissioner of Central Excise is reported in 2003 (157)ELT A-314 (SC).

4. Plain reading of the impugned order discloses that the entire appeal was disposed of by one paragraph, which reads thus:-

> " I have carefully examined the case records including the Appellants' submissions made in writing and at the time of personal hearing and observed that the contention of the Appellant is that Add-on-cards is classified under Chapter Heading No.84.73 which is squarely covered in the case of Vintron Electronics (P) Ltd. Vs. Commissioner of Central Excise, New Delhi reported as 2003 (151) ELT 589 (Tribunal-Delhi) and held that "Computer Components – "Add-on-Card" classifiable under Heading 84.73 of Central Excise Tariff Act, 1985 – Appellant have been classifying the items under Heading No.84.73 ibid. In absence of any material to show that item is nothing but "Control and adapter Units' mentioned in HSN explanatory notes, request to charge the classification from Heading No.84.73 to 84.71 ibid not accepted."

5. Since the Commissioner (Appeals) did not consider the matter on merits and did not ascertain whether the claim of the department regarding

classification was justified or not and merely on the basis of the order passed by the Tribunal, which has already been stayed by the Supreme Court, disposed of the matter, the impugned order can not be sustained and is liable to be set aside and the matter is remanded to the Commissioner (Appeals) to decide the same on merits after taking into consideration the rival contentions.

6. Accordingly, the appeal succeeds. The impugned order is set aside and the matter is remanded with direction to decide the same afresh in accordance with the provisions of law without taking into consideration the decision of the Tribunal in Vintron Electronics case.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

Ckp.