CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Appeal No. E/1070/2009

(Arising out of Order-in-Appeal No. 30/2009 (H-III) CE dated 09.09.2009 passed by Commissioner of Customs, Central Excise and Service Tax (Appeals – III), Hyderabad)

Linkwell Telesystems Pvt. Ltd., …..Appellant(s)

Vs.

Commissioner of Central Excise, Customs & Service Tax, Hyderabad - III …..Respondent(s)

Appearance
Shri B. Venugopal, Advocate for the Appellant.
Shri P.S. Reddy, Assistant Commissioner (AR) for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 23/05/2018
Date of Decision: 16/07/2018

FINAL ORDER No. A/30714/2018

[Order per: M.V. Ravindran]

This appeal is directed against Order-in-Appeal No. 30/2009 (H-III) CE dated 09.09.2009.

2. The relevant facts that arise for consideration, after filtering out of unnecessary details are the appellant herein are engaged in the manufacture of coin operated phones and GSM pay phones; obtained CRCA sheets without payment of duty under Central Excise (removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2001 (herein after referred to as Rules) on the strength of requisite certificates issued for the purpose claiming benefit of Notification No. 06/2006-CE dated 01.03.2006 as amended. The Lower Authorities issued a show cause notice alleging that the appellant had wrongly availed the benefit of notification as (Serial No. 31 of said Notification No. 06/2006) accordingly, demand was raised along with interest and proposal for penalty was also made. The Adjudicating Authority after following due process of law, confirmed the demands raised along with interest and also imposed penalties and appropriated the amounts already deposited by the appellant. On an appeal against such an order, the First Appellate Authority has set aside the penalty imposed but upheld the demand of duty and interest.

3. Learned Counsel appearing for the appellant after taking Bench through the entire case records, submits that in terms of Rule 3 of the said Rules, appellant made an application to the Jurisdictional Authorities for claiming the benefit of notification and based upon suitable certificates procured the CRCA sheets issued after executing the general point with the surety. It is his submission

that there is no dispute as to the fact that CRCA sheets were procured and used in the manufacturing of phones. Further he would submits that GSM pay phones for which CRCA sheets were used are to be considered as eligible for exemption under Serial No. 31 as the said sheets received by the appellant is with specific dimensions and hence to be considered as part of cellular phones. He relied upon the decision of *MP (I) Ltd.,* [1990 (46) ELT (68)] affirmed by the Supreme Court as reported at [1997 (95) ELT A142], *Bansal Industrial Corporation* [2000 (118) ELT 119] and *Motor Industries Company Ltd.,* [1995 (75) ELT 65] and affirmed by the Apex Court [2003 (152) ELT 36]. It is his further submission that in the case in hand, there is no dispute that appellant has followed the procedure prescribed under Rule and not used for goods anything else only for the purpose. Hence, demand can be raised along with interest.

4. Learned Departmental Representative reiterates the findings of the Lower Authorities.

5. On careful consideration of submissions made, we find that Serial No. 31 of Notification No. 06/2006 on which reliance is placed by the Learned Counsel reads as under:

31.	8529 9090	Parts, components and accessories of mobile handsets including cellular phones	Nil	3

The condition attached in the above reproduced Serial No. 31 is that procedures of Rules should be followed. In our considered view, the Lower Authorities were correct to hold that CRCA sheets, howsoever cut to size and used for manufacture of handset and coin operated phones, cannot be considered as parts, components and accessories of mobile handset including cellular phones. In our view, the findings of the First Appellate Authority and the Adjudicating Authority in this case are correct and needs to be upheld.

6. As regards the second point made by the Learned Counsel in our view, the benefit of notification if it is not available at the first instant following the procedures laid down in the said Rules, will not entitle the appellant herein the exemption of the duty paid on CRCA sheets.

7. In our considered view, the impugned order of the First Appellate Authority is correct and legal and does not suffer from any infirmity. The impugned order is upheld and the appeal stands rejected.

(Order pronounced on 16/07/2018 in open court)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi….