CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD
REGIONAL BENCH - COURT - I

Customs Appeal No. 226 of 2009

(arising out of order-in-appeal No 74/2008(H-II) (D) dated 16.12.2008 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals) Hyderabad)

The Commissioner of Central Excise & Customs
Hyderabad-II
Kendriya Shulk Bhavan
L.B. Stadium road,
Basheerbagh, Hyderabad

Appellant

Versus

M/s Big Apple Computers,
1-8-167 to 179
SD Road, Secunderabad

Respondent

Appearance:

Mr A. Rangadham A.R. for the Appellant

Mr Prabhu Dayal Aggarwal, Adv for the Respondent.

CORAM

HON'BLE Mr S.K. Mohanty, Member(Judicial)
HON'BLE Mr. P. Venkata Subba Rao, Member (Technical)

FINAL ORDER No. 30572/ 2020

Date of Hearing: 18/02/2020
Date of Decision: 18/02/2020

[ORDER PER: S.K. MOHANTY]

Revenue has assailed the impugned order dated 16/12/2008 passed by the learned Commissioner of Customs, Central Excise and Service Tax (Appeals-III), Hyderabad on the ground that change in classification of subject goods in the adjudication order dated 10.12.2018 is not proper and justified.

2. The learned A.R. appearing for the revenue supports the findings recorded in the adjudication order dated 10.12.2008 and further states that the goods in question namely monitors and T.V. tuners should appropriately be classifiable under CTH85285900 and 85299090, as against the change in classification made by learned Commissioner (Appeals) in the impugned order under CTH 85285100 and 84733030 respectively.

3. On the other hand, the representative of the respondent, at the outset, submits that in violation of principles of natural justice, the department has changed the classification of the goods and the documents submitted before the original authority were also not considered in proper perspective in arriving at the conclusion that the goods in question should be classified under different tariff heading, than the classification made by the respondent in the bills of entry, presented for assessment. In this context, he has referred to paragraph 9 in the original order dated 10.12.2008 to state that the request made by the respondents for grant of opportunity of personal hearing for cross examination of the concerned department officers has not been considered favourably by the department and no finding to such effect was also recorded in the said order. Thus, he submits that the matter should be remanded to the original authority for grant of opportunity to cross-examine the person involved in the case and thereafter to decide the issue on the basis of the records/evidence to be produced by the appellant in support of its contention regarding the classification made in the Bills of Entry in context with the subject goods.

4. Heard both the sides and perused the records

5. Paragraph 9 in the adjudication order dated 10.12.2008 passed by the learned Assistant Commissioner of Customs Hyderabad is relevant for consideration of the issue involved in the present appeal. As such, the observations made in the said order is extracted herein below:

> "9. Shri Prabhu Dayal, Representative of the Importer appeared for personal hearing on 08/12/2008 and requested to examine/cross-examine the Shed Inspector/Appraising Officer who concluded the item at Sl. No.1 of the Bill of Entry as TV but not Computer Monitor. On rejection of his request, he said that he could connect the monitor to the System and show it working. Then, he read out the TV guidelines and also Monitor guidelines and how they should be differentiated as per the given Circular of the Department. Further he reiterated that reliance on any other website, etc. should not be placed until a copy of the same was supplied to them and also it was shown/demonstrated online."

6. On examination of the recordings at paragraph 9.6 in the adjudication order, we find that request made by the respondent herein for cross-examination of the concerned officials of the department who changed the classification of the goods were not being adhered to and no specific reasons have been assigned for denial of cross-examination of those persons. Further, it is also noted that the respondent herein have specifically stated before the original authority that it is in a position to establish the fact that the goods in question imported by it should appropriately be classifiable under CTH mentioned in the bill of entry. Thus, it is a classic case that the matter was adjudicated against the respondent by denying the principle of natural justice. In this context, the law is well settled that the matter cannot be adjudicated behind the back of the importer and importer should be given adequate opportunity to

explain its case with the documentary evidence in support of the claim of classification of the subject goods under CTH 8528100 and 84733030 respectively. Therefore, we are of the considered view that the matter should be examined at the original level thoroughly with the help of the submissions made by the respondent in support of its claim of classification under the CTH mentioned in the bill of entry presented for assessment.

7. Accordingly, after setting aside the impugned order, we remand the matter to the original authority for re-adjudication of the matter in line with the above observations. Needless to say, that opportunity of personal hearing should be granted to the respondent and the respondent should also be allowed for cross-examining the concerned officials who had opined for change in classification of the goods at the time of initial examination.

8. In the result, Revenue's appeal is allowed by way of remand to the original authority.

(pronounced and dictated in open Court)

(S.K. Mohanty)
Member (Judicial)

(P. Venkata Subba Rao)
Member (Technical)

Neela reddy