**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**WEST ZONAL BENCH AT MUMBAI**
**COURT NO.**

**Appeal No. C/1181/2012**

(Arising out of Order-in-Appeal No. 150/Mumbai-III/2012 dt. 08.08.2012 passed by the Commissioner of Customs (Appeals), Mumbai-III )

**M/s. SRP Enterprises Pvt. Ltd.** : **Appellant**

**VS**

**Commissioner of Customs & Central Excise** : **Respondent**

**Appearance**

None for Appellant
Ms. Trupti Chavan, Asstt. Commr. (A.R) for respondent

**CORAM:**

**Hon'ble Dr. D.M. Misra, Member (Judicial)**
**Hon'ble Mr. C.J. Mathew, Member (Technical)**

**Date of hearing : 04/10/2018**
**Date of decision : 04/10/2018**

**ORDER NO. A/87561/2018**

***Per : Dr. D.M. Misra***

This is an appeal filed against Order-in-Appeal No. 150/Mumbai-III/2012 dt. 08.08.2012 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. None present for the appellant despite the notice. Heard the learned AR for the Revenue.

3. Briefly stated the facts of the case are that the appellant had imported "TCL Still Image Digital Video Cameras-DV522" and filed Bill of Entry No. 657867 dt. 28.7.2010. They claimed classification of the said imported goods under CTH 85258030 and claimed benefit of notification No. 25/2005-Cus. Dt. 1.3.2005.

The adjudicating authority assessed the bill of entry without extending the benefit of exemption Notification No. 25/2005-Cus. Dt. 1.3.2005. Aggrieved by the said order, they filed appeal before the Ld. Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

4. Learned AR for the Revenue has submitted that neither before the adjudicating authority nor before the Ld. Commissioner (Appeals), the appellant had produced the relevant product, literature/user manual of the imported item in support of their claim that the product imported by them was not video cameras, but still 'cameras'. It is his contention that since the appellant could not produce the relevant user manual/product literature; the Ld. Commissioner (Appeals) considering the operating procedure and other features, held that it is classifiable under CTH 85258030 as video camera hence, not eligible to the benefit of the said notification.

5. We find that the short issue involved in the present appeal is whether the imported item namely "TCL Still Image Digital Video Cameras-DV522" eligible to the benefit of exemption notification No. 25/2005-Cus. Dt. 1.3.2005 (Sr. No. 13) of the said notification. The Revenue alleging that the imported item is Video Camera (Camcorders) whose main function is recording of images of moving objects, could not confine only to Still images, denied the benefit of the said exemption notification. Before the Ld. Commissioner (Appeals), appellant could not able to justify, even though claimed that the primary function of the imported "Camcorders" DV 552 is meant for recording Still Image and not

for video recording, by production of the relevant literature/user manual submitting that the same is unavailable. The Commissioner taking the product description and usage from the internet and also the circular of the board on the issue, came to the conclusion that the imported product is a 'Video Camera' and not eligible to the benefit of said notification. The Board in its circular No.32/2007-Cus. Dt. 10.9.2007 after due consideration of the eligibility of different types of cameras to the benefit of exemption notification No. 25/2005-Cus. Dt. 1.3.2005 clarified as follows:

> *"6. The term 'Video' relates to recording, reproducing or broadcasting of visual images. It is a technology of electronically capturing, recording, processing, storing, transmitting, and reconstructing a sequence of still images representing scenes in motion. The term "Still image video" camera covers the types of camera that take still images and stores them as single frame of video. These single video frames, when reproduced at a specified frame rate achieve an illusion of a moving image. The minimum frame rate is about fifteen frames per second. The term 'digital still image video camera' covers only digital cameras that have the capability of taking still images. This would also include digital cameras that take moving images for limited period of time although they are primarily still image cameras. Such cameras fall under tariff item 8525 80 20. However, digital cameras that can take both still images and moving images like Camcorder or video recorder falling under Tariff item 8525 80 30 shall not be covered under the said entry. Digital still image video cameras can also be differentiated from the still cameras of heading 9006 i.e. photographic film cameras. Cameras of this type are also not eligible for the benefit of these notifications.*
>
> *7. It is accordingly clarified that the benefit of entry at Sl. No. 314 of notification No.21/2002-Cus. as well as Sl.No.13 of Notification 25/2005-Customs dated 1.3.2005 would be available to 'digital cameras' with still image recording as its*

> *principal function. This would also include those digital cameras that have the capability of recording moving images for a limited period of time".*

Before the Ld. Commissioner (Appeals) as well as before this forum, that is in the grounds of appeal, even though the appellant had claimed that the product recorded by them is not a video camera but meant to record still image primarily, however, could not produce any evidence to support their claim. Needless to mention in claiming the benefit of an exemption notification the burden lies heavily on the person who claim the exemption. In the present case, the appellant could not discharge the said burden. This principle has been laid down by the Hon'ble Supreme Court in the case of Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company 2018 (361) ELT 577 (SC). In the result, the impugned order is upheld and the appeal is dismissed.

(Operative portion of the order pronounced in court)

***(C.J. Mathew)***
***Member (Technical)***

***(Dr. D.M. Misra)***
***Member (Judicial)***

*SM*