SUPREME COURT OF INDIA

Commissioner of Central Excise, Mumbai

Vs.

C.M.S. Computers Private Limited

C.A.No.5583 of 1999

(S. H. Kapadia, S. N. Variava and Dr. A.R. Lakshmanan JJ.)

02.02.2005

JUDGMENT

S. H. Kapadia, J.

1. This Appeal is against the Judgment of the Tribunal dated 24lh November, 1998.

2. The Respondents manufactured mini computer processing system of the following models:-

"(i) CMS-II, CPU with floppy drive and keyboard.

(ii) CMS PC CPU with floppy drive and keyboard.

(iii) CMS PC/XT - CPU with floppy drive and keyboard.

(iv) CMS PC/AT - with keyboard, Winchester drive and floppy drive.

(v) CMS mini CPU with keyboard and floppy drive."

Prior to March 1987 computers were totally exempt from payment of duty. Therefore, the Respondents were clearing the computers without paying the duty. With effect from 1st March, 1987, computers became a dutiable item. The Respondents, therefore, filed a classification list which was approved. In this classification list they did not include monitors and printers. The Respondents also claimed benefit of Notification No. 175/86-C.E., dated 1st March, 1986. The relevant portion of the Notification reads as follows:-

"In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 85/85-Central Excises, dated the 17th March, 1985, the Central Government hereby exempts the excisable goods of the

description specified in the An-nexure below and falling under the Schedule to the *Central Excise Tariff Act, 1985* (5 of 1986) (hereinafter referred to as the "specified goods"), and cleared for home consumption on or after the 1st day of April in any financial year, by a manufacturer from one or more factories, -.....

(c) .....

3. Nothing contained in this notification shall apply if the aggregate value of clearances of all excisable goods for home consumption.

(a) by a manufacturer, from one or more factories, or

(b) from any factory, by one or more manufacturers, had exceeded rupees one hundred and fifty lakhs in the preceding financial year".

Show cause notices were issued to the Respondents claiming that monitors and printers were part of the computers. It was claimed that the value of monitors and printers was required to be included in the value of the computers. It was claimed that if these were included then Respondents would not be entitled to the benefit of the Notification inasmuch as the turnover of the Respondents would then be beyond the limit specified in the Notification. The demand against them was confirmed by the Collector. However, the Tribunal has by the impugned Judgment set aside the demand by holding that the demand was beyond time as the extended period under Section 11(A) was not available.

3. Before us very fairly it was not disputed that the Respondents do not manufacture monitors and printers. It is fairly stated that they buy these from the market and supply to customers if customers require them. It was also fairly not disputed that monitors and printers were supplied in approximately 30% of the cases only. It was also not disputed that the monitors and printers supplied by the Respondents were duty paid items which had been bought from the market.

4. It appears to us that a monitor or a printer is not an essential part of the computer. It is a peripheral item which may be required along with a computer. We are unable to accept the submission that by virtue of Chapter Note 5 to Chapter 84 a monitor or printer becomes an essential part of a computer. By virtue of this Chapter Note a monitor and or a printer may also be classifiable under the same tariff heading. However, merely because the tariff entry may also include a monitor or printer would not lead to the conclusion that a monitor or printer is an essential part of a computer. All that this Chapter Note indicates is that not only the computer but a monitor and a printer are also excisable products. But the monitor and or printer will be excisable in the hands of their manufacturer. The Respondents do not manufacture the monitor or the printer. On facts it could not be disputed that in approximately 70% of the cases monitors and printers are not supplied along with the computer sold by the Respondents. Thus, it cannot be concluded that Respondents sell their computer as a unit which include a monitor and a printer. As a monitor and printer are not

essential parts of the computer their value cannot be included in the value of computer. We, however, clarify that situation may be different where a manufacturer sells a computer with a monitor and a printer as a unit.

5. The other question which arises is whether the Respondents are entitled to the benefit of Notification No. 175/86-C.E., dated 1st March, 1986. It is submitted that the Respondents would only be entitled to the benefit of this Notification if the turnover did not exceed Rs. 150 lakhs in the preceding year. It is submitted that if the cost of the monitor and printer is taken into account, then the total turnover would exceed Rs. 150 lakhs. The arguments of the Revenue may have been acceptable if the concerned Notification provided that the turn over should not exceed Rs. 150 lakhs. However, as seen, the Notification is granting an exemption provided that the aggregate value of clearances of all excisable goods does not exceed Rs. 150 lakhs in the preceding year. The value, therefore, necessarily has to be in respect of clearances of goods manufactured by the Respondents which admittedly in this case are only the CPUs and the keyboard. Therefore, for the purposes of this Notification the value of traded items like monitors and printers was not to be included.

6. Even otherwise, we find that the Tribunal was right in holding that the demand was barred inasmuch as the classification list had been approved. All facts were therefore within the knowledge of the Department. The extended period of limitation was not available to it.

7. Under these circumstances, we see no reason to interfere. The Appeal stands dismissed. There will be no order as to costs.