2014 (1) ECS (233) (Tri – Del.)

Customs, Excise & Service Tax Appellate Tribunal
West Block No. II, R.K. Puram,New Delhi - 110066
COURT NO. III

Date of Decision : 24.07.2013

M/s. UNIFAX SYSTEMS & OTHERS

Vs.

CC, NEW DELHI

Customs Misc Application No. 55555 of 2013-EX[SM]

Customs Stay Application No. 2533-2536 of 2012

Customs Appeal No. 1887-1890 of 2012

Appearance:
Shri L. Badrinarayan &
Rachit Jain, Advocates — For the Appellant
Shri Devinder Singh,Jt.CDR(sic.) — For the Respondents

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Manmohan Singh, Member (Technical)

(STAY ORDER NO. 50846-50849/2013-Cus(BR))

"Exemption was only available if their machines were capable of connecting to automatic data processing machines on network. Based on findings, it has come out that these machines were classifiable under 8443 3970 which attracted duty at rate of 7.5%. The appellant have been regularly importing the said goods under customs tariff heading 84433260 attracting nil rate of duty. -Further there has to be positive act on the part of the assessee to suppress the information which is required to be given by them or mis-state the facts with intent to evade payment of duty." (Para 9)

"The appellant failed to meet the technical test made by an independent expert who was agreed by both sides to conduct demonstration. The ATA is a device used to connect one machine with other since the technology of one ATA recognizes I.P. address of the other to communicate. A detailed exercise during practical demonstrative showed that machine imported by the appellant failed to be connected to the Automatic Data Processing machine. Accordingly, Revenue came to the conclusion that the machines imported by the appellant were connectivity disabled with Automatic Data Processing machine." (Para 23)

"The product literature gathered by Revenue including price-list proved that the goods imported was not capable of being connected directly to Automatic Data Processing Machine." (Para 25)

"It appears that there was deliberate mis-declaration with intent, to evade payment of customs duty and such action of the appellant calls for direction for pre-deposit since no time bar applies to a fraudulent deal, following the ratio laid down by Apex Court in the case of CC Vs. Candid Enterprise reported in 2001 (130) ELT 404 (SC)." (Para 26)

Per Archana Wadhwa (for the Bench):

All these four stay petitions are being disposed of by a common order as they arise out of same impugned order passed by the Commissioner vide which he has confirmed duty of Rs.82,71,874/- against M/s. Unifax System Ltd. along with imposition of penalty of identical amount. In addition, penalties stand imposed upon other applicants.

2. After hearing both sides, we find that during the period 2007-2010 appellant M/s. Unifax imported various information technology goods including Facsimile machines from M/s. Panasonic Asia Pacific Pte.(sic) Ltd., Singapore. They declared the said goods as falling under Customs Tariff Heading 8443 32 60, which provides nil rate of duty. However, subsequent to the clearance of goods, investigations were initiated and a view was entertained that the goods are properly classifiable under heading 88433 39 70 which attracts duty at the rate of 7.5%. Such view was entertained on the ground that the machines in question were not capable of connecting to automatic data processing machines or network. The notice was issued by invoking longer period of limitation and stands culminated into an impugned order passed by the Commissioner.

3. After hearing both sides at length, it is seen that in subsequent proceedings were for correct classification of processing machine imported by the appellant. Whereas the appellants have claimed the classification under heading 8443 32 60, Revenue has classified the same under heading 8443 32 70. Without going into the merits of the case, we find that show cause notice stand issued by invoking the longer period of limitation. The Commissioner has upheld the invocation of longer period of limitation by observing as under:-

> *"81. The noticees have contended that in this case, there is no suppression of facts and malafide intention. They have been regularly importing the goods and declaring the same to the Department as the same were neither questioned by the Proper Officer nor any enquiries were raised in this behalf. Therefore, invocation of extended period for demanding the duty on behalf of its misdeed is not justified on facts*

and laws. Further, the importers did not act with malafide intention. They classified the goods as instructed/advised by their foreign suppliers and the price list circulated by them. Therefore, they are not liable for any penal action under Section 114A or Section 112 (d) of the Customs Act, 1962.

88. It has been alleged in the show cause notice that the noticee importers were fully aware of the scheme of classification and the duty liability on the imported goods. Therefore, they were aware of the fact that the machines having no connectivity feature are not liable to be classifiable claiming NIL rate of duty. This was willfully done to evade payment of Customs duty.

89. I have considered both the points. I do find some force in the argument that as an importer, an input received from the supplier is also an important factor which may have influenced their decision with regard to classification of goods and the dutibility, though final decision for classing the goods rests with them. It would be reasonable to expect from such importers who are regularly dealing with such goods, to be familiar with the various aspects of classification of goods and Customs duty angle. They are not working in-isolation and in vacuum. When other importers are importing the identical goods and paying appropriate Customs duty, a reasonable doubt/query would be entertained by such importers and not to go by the single advice given by the supplier who has a vested interest in the matter. A reasonable course would have been to take up the matter with the Proper Officers of Department of clarify the issue or write to the Department indicating their view point. Nothing of this sort was done in this case. Ignoring distinct classification as provided in law and the dutibility angle in question, the noticees intentionally continued to mis-declare the goods and evade payment of Customs duty. Therefore, to my mind, they willfully suppressed the facts regarding the description and feature of the goods and are liable for penal action. Invocation of extended period is very much justified in the circumstances and they are liable for penal action. "

4. As is seen from the above, the adjudicating authority has not referred to any mis-statement or suppression of facts attributable to the appellant with an intent to evade payment of duty. Longer period of limitation stand invoked only on simplicitor ground that the appellant is a regular importer and as such, should have been familiar with various aspects of classification of the goods. It is well settled law that for invoking the longer period of limitation, there should be some positive act on the part of the assessee to suppress the information, which is required to be given by him or to misstate some facts, with an intention to evade payment of duty. Similarly

there is plethora of judgments laying down that where the assessee has claimed the classification under a particular head, the Revenue authorities are at liberty to call for more information, if required and in such cases, the assessee cannot be held guilty of suppression.

5. In the present case, the appellant placed on record, fact of import of Facsimile machines and according to their understanding, claimed the classification of the same in a particular heading. The same was duly processed by the officers and the goods were cleared. As such, to say that the appellants claimed wrong classification and are guilty of suppression is neither justified nor warranted. If the officer has assessed the goods in a particular heading, appellant cannot be blamed for claiming the same very classification. The Revenue is expected to be an expert body and to assess the goods under the correct heading. The reasoning of the adjudicating authority that when the other importers were importing identical goods and paying appropriate customs duty, the importer should have sought the advise cannot be appreciated inasmuch as if the other importer were importing the goods under the classification claimed by the Revenue, the Customs officer was equally bound by the same and is expected to be knowledgeable about the same. As such, while assessing the goods, the Revenue has not raised any objection as regards classification and has allowed the goods to be cleared under the classification claimed by the importer, no malafide can be attributed to the importer. At this stage, learned advocate has also brought on record an another order passed by Commissioner (Appeals) wherein he has held that there was confusion even in the Revenue as to correct classification of the goods. For better appreciation, we reproduce the relevant para in his Order-In-Appeal No.288-289/2013-Cus/Commr(A)/AHD. dated 29.4.2013.

> *"9.1 On the question of limitation, I have found discussed the same in detail in the stay order, supra. To recapitulate, I find that the issue of classification was complex and had already been raised by the field formation in 2009 itself.It is revealed from records that the appellants were not given benefit of lower duty since June 2009. In other words, the question whether the classification would be under CTSH 84433970 or anywhere else, is a highly technical issue. In a case, where even department was not sure about correct classification. I cannot uphold charge of suppression or fraud against an importer. Further, in the Circular No. 5/92-CX4 dated 13.10.92 it has been observed as under by the CBEC:*
>
> *"2. It has also come to the notice of the Board even in cases where either no duty was being levied or there was a short levy on any excisable goods in the belief that they were not excisable or were chargeable to*

lower rate of duty, as the case may be, show cause notices have been issued covering five years period on receipt of the communication from the Board that the said goods are excisable or chargeable to higher rate of duty. Such type of cases could not normally be covered by the proviso of para (i) of Section 11A, as it would be difficult to prove fraud, collusion etc. when the Department as well as the Trade were not clear about the correct legal position. In such cases, it would ordinarily call for restricting the demands for six months from the relevant date only. There could be exceptions, say, where the assessments or RT 12s indicated that the matter had been opened up on some earlier date. Facts in each case have to be studied by the Collectors to make sure that there are good and sufficient reasons to invoke the extended period indiscriminate use of such restricted powers even at high levels leads to fruitless adjudications with the gamut of appeals and reviews, inflates the figures of outstanding, confirmed and unconfirmed demands and above all, avoidable harassment of the assessees. "

9.2 Further, appellant, has rightly cited the case law of Collector of Central Excise, Hyderabad v. Chemphar Drugs and Liniments [1989 (40) ELT 276 (SC)], wherein the Hon'ble Supreme Court held that for making the demand of duty sustainable beyond the period of six months, it has to be established that the duty was not levied or paid or short-levied or short paid of erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made there under, with intent to evade payment

9.3 Since the present case is the one where there was no clarification on the issue of classification and benefit of exemption notification and that it is not a case where the appellant had misdeclared the goods, it would not be appropriate to invoke extended period. In a similar case, but relating to printers, the CBEC had to examine the matter and come out with CBEC Circular No. 11/2008- Customs, dated 1.7.2008. The instant case appear to be equally complex and it appear to me that there was no clarity, whatsoever, on the classification aspect, either to the Department or to the appellants. I find that in the instant case, the show Cause notice was issued on 17.01.2012 in respect of demand for the period from 27.01.2007 to 25.05.2009, as per the Annexure A attached to the SCN. The SCN as well as the impugned order do not elaborate as to why there was willful suppression or fraud except that in the impugned order, it is stated that the appellant had suppressed the full details of Fax machine and claimed specific tariff heading provided for Fax machine capable for connecting to an ADP machine or to a network. No other evidence is on record to support the ground of suppression. "

6. We are not aware as to whether the Revenue has accepted the said order of Commissioner (Appeals) or challenged the same before the Tribunal. Even if challenged, Revenue has not been able to show that the same has been stayed. In any case, we otherwise agree with the observations made by the Commissioner (Appeals) in the said decision, when the same talks about that there was no clarity on the issue of classification during the relevant period. He has also referred to the Boards' Circular dated 13.10.92, which lays down that when the department as well as Board are not clear about the correct legal position, the demands are ordinarily to be restricted to 6 months from the relevant date.

7. As such, we are of the prima facie view that as the demand in question is barred by limitation, the appellant is entitled to unconditional stay. We order accordingly and allow all the Stay petitions.

(Pronounced in the court on)

PER: MANMOHAN SINGH

8. Having gone thorough the order proposed by the learned Member (J), I proceed to record the separate order inasmuch as I do not agree with the finding to grant unconditional stay in all four appeals under consideration arrived at by learned Member (J).

9. The major plea of the applicants for grant of stay in these cases is that prima facie the demands, in question, are barred by limitation and the appellants are entitled to unconditional stay. However, based on investigation by the DRI, it comes out that appellants were wrongly availing the nil duty exemption on their goods, namely fax machines. Exemption was only available if their machines were capable of connecting to automatic data processing machines on network. Based on findings, it has come out that these machines were classifiable under 8443 3970 which attracted duty at rate of 7.5%. The appellant have been regularly importing the said goods under customs tariff heading 8443 3260 attracting nil rate of duty. Appellants have raised the point that since they were regular importers and no objection was raised by the department thus prima facie longer period of limitation is not invokable. Further there has to be positive act on the part of the assessee to suppress the information which is required to be given by them or mis-state the facts with intent to evade payment of duty. The reasoning taken by the adjudicating authority has also not been accepted on the ground that it cannot be appreciated that other importers were importing under classification claimed by the Revenue. From the facts on records, it is to find out that whether there is a case of mis-declaration of classification and consequently claiming nil rate of

duty on facsimile machines by Unifax Systems solely liable to fulfil limitation factor or extended period is invokable.

10. The major issue for consideration is that facsimile machines imported by the appellants were from Panasonic Asia Pasific Pvt. Ltd., Singapore, declaring their goods failing under chapter heading 8443 32 60 which provides nil rate of duty. However subsequent to clearances of the goods, investigations were initiated by DRI, Ahmedabad and it was found that these goods i.e. facsimile machines were rightly classified under chapter heading 8443 39 70 which attracts duty @ 7.5%. It is admitted fact that these facsimile machines were not capable of connecting to an automatic data processing machine or network. During investigation, it was found that Unifax Systems is the subsidiary of Panasonic and they were in the full knowledge of specification of facsimile machines imported by them which were not capable of connecting to an automatic data processing machine or network, [there was clear case of misdeclaration of classification under chapter 8443 32 60 whereas these were classifiable under chapter heading 8443 39 70 which attracts duty @ 7.5%]. Shri Sanjeev Puri in his statement recorded on 09.11.2009 has admitted that the three fax machines were shown compatible with the operating system of Microsoft in their Technical specifications. The other fax machines were not connected to an automatic data processing machine or a computer. He contended that all the machines were capable of being connected to an I.P. network. This fact is also corroborated by the statements of other importers of similar brands and in the statements of personnel of M/s.Panasonic. He also stated that they were engaged in the import and sale of "Panasonic" brand Fax machine. He also admitted that M/s. Panasonic has instructed them verbally regarding the classification of the goods and accordingly all the models of fax machines imported by them were cleared without payment of basic customs duty under customs tariff heading 8443 32 60. Further it is also a fact on record that price list circulated among importers were showing relevant fax machines attracting nil rate of duty of customs under heading 8443 3260. In the course of investigation, the importer constantly stated that impugned models were connected to network that these functioned only when these connected to telephone network.

11. I have also perused the impugned order of the Commissioner where it has been clearly observed that future declaration filed as well as statements recorded by the DRI clearly come out that facsimile machines were classifiable under heading; 8443 3970 instead they claimed them as classifiable under heading 8443 32 60 and it comes out that there was misdeclaration of classification which was well

considered and not a bonafide mis-declaration as claimed by them. If the DRI had not undertaken the investigation, this fact of mis-declaration could not have been come out and there could be loss of Revenue. For ready reference, paras 83 to 86 of Commissioner are quoted as under:-

> *"83. It would be reasonable and prudent expectation from an importer that before importing the goods, he carries out necessary enquiries regarding the make and model and the features particularly in view of the fact that it was revenue implications and classification issues.; The manufacturer of fax machines are M/s.Panasonic Asia Pvt. Ltd. It has been argued that their suppliers had advised the importer to classify the goods under Customs Tariff Heading to attract NIL rate of duty. They also circulated a price list wherein the customs duty has been shown as NIL. In this context, it would be pertinent to note that the same supplier had earlier classified the said fax machines attracting Customs duty @ 7.5% Adv. and subsequently changed the same to NIL Customs duty. In any case, the sole responsibility lies with the importer and it is for the importer to ensure that correctness of classification of goods with regard to CTH heading and applicable rate of duty and the true declaration to be made in the bill of entry.*
>
> *84. It is important to note that the suppliers are the co-noticees in this case and they have categorically stated in the personal hearing that they have no connection with regard to any mis-classification of the goods and the Bill of Entry filed by the importer. They have argued that they are not the importers of the goods. The fax machines have been imported by M/s.Unifax Systems, New Delhi and it is for them to file the bill of entry and indicate the classification of goods. They are not concerned with any mis-classification or mis-declaration made by them and, therefore, are not liable for nay penalty action. Further, the onus for checking/deciding the classification of goods rests with the Customs assessing authority who assessed the bill of entry.*
>
> *85. In view of foregoing and considering the technical literature, the physical demonstration and the opinion of the experts to my mind, it is clearly established that the facsimile machines in question did not have the in build networking connectivity features. The same are not capable to be connected to the Automatic Data Processing Machines and, therefore, they were not classifiable under Customs Tariff Heading 8517 1190, 8443 3260,8443 3100 attracting NIL rate of duty. On the contrary, the goods are classifiable under Customs Tariff Heading 8443 3970 attracting appropriate rate of Customs duty. The same reasoning also holds good for parts of relevant facsimile machines. Consequently, a feeble attempt has been made that the noticees are the regular importers and they have been importing the*

goods and filing bills of entry with the Proper Officer who allowed the clearance on their declaration. I do not find that how past clearances come to their rescue. The assessing officers assessed the goods on the basis of information and documents presented to them. The problem of the assessing officer is that he cannot make roving enquiries and delay the clearance of goods. If he does so, he is held accountable. Unless, he has specific information or input with regard to mis-declaration of description or quantity or under valuation of goods, he cannot hold the consignment from clearance. As an assessing officer, they assessed the goods as declared in the relevant bill of entry. The DRI is a specialized investigating agency that has/develops intelligence and on specific inputs. These-are time consuming efforts and processes. This is not the role arranged to assessing officers. After detailed investigations, the DRI come to the conclusion regarding the mis-declaration/evasion. In this case, detailed investigations were caused by the DRI. The earlier assessments do not come to their rescue.

86. In view of the foregoing discussion, I find that the noticees were fully aware of the scheme of classification of goods. Also, they were fully aware that whereas one set of facsimile machines of specific models having computer networking connectivity features are classifiablei under one heading attracting NIL rate of duty, the other set of facsimile machines having no such features are not capable to be networked with Automatic Data Processing Machines are classifiable under a different tariff heading attracting appropriate rate of Customs duty. With such full knowledge, they mis-declared that all the facsimile machines with a view to evade payment of appropriate Customs duty claiming NIL rate of duty. Therefore, I hold that the facsimile machines bearing Model Nos. FT 931/981, IFT 933/983, FT 937/987, FP 206/701/343, FL 206, FL 613, FL 402, FL 422 are liable to be classified under Heading No.8443 3970 and the Custom duty at the appropriate rate as mentioned in the show cause notice is liable to be demanded from them."

12. Regarding reasoning taken that the Revenue has not raised any objection and allowed the goods to be cleared under classification by the importer no malafide can be attributed. In this Plea that they were regular importers and customs has also been accepting and approving their classification has no force. Non declaration of proper feature and classification cannot come to their rescue.

13. In view of above facts, ground of limitation of time is coming to their rescue, is not sustainable. Actually their conduct and silent acceptance of advice of their supplier for filing nil rate of duty B/E are clear indication of mis-statement manifesting intent to evade payment of duty.

14. Their submission that Commissioner (Appeals) at Ahmedabad dropped demand of extended period is not relevant to the facts of this case here. Commissioner of Customs at Delhi has thoughtfully gone through the facts and has come to reasonable conclusion of violation of extended period. Prima facie no case for total waiver of pre-deposit is made in all four cases. This is fit case for direction to deposit of 50% of total demand i.e. Rs. 82,71,874/-, and on deposit of this amount, pre- deposit of balance amount of duty and penalty shall stand waived and recovery stayed till disposal of the appeal. Compliance to be reported within four weeks of receipt of this order.

(MANMOHAN SINGH)
MEMBER(TECHNIAL)

DIFFERENCE OF OPINION

Whether the applicants to be granted unconditional stay in all four appeals as arrived at by learned Member (J) or they were required to be asked pre-deposit of 50% out of customs duty of Rs. 82,71,874/- as held by Member (Technical).

PER D.N. PANDA

15. This reference arose at the stage of disposal of interim application where both the Members differed in their decision. While learned Judicial Member recorded that no pre-deposit is warranted in view of bar of limitation recorded in para 3 of his order, learned Technical Member in Para 13 recorded that in view of deliberate mis declaration of description of the goods plea of time bar is not tenable and the goods imported were liable to duty not being connectible to automatic data processing machine proved by practical demonstration and there was abetment proved from ill design between exporter and importer for which pre-deposit to the extent of 50% of duty demand of Rs. 83,71,874/- is warranted to protect interest of Revenue.

16. It was found by learned adjudicating authority that the goods imported between 2007 to 2010 by 37 by different bills of entry were declared to be Facimile machine of certain models not being capable of getting connected to, automatic data processing machine declaring that classifiable under heading 8443.3260 instead of classifying under heading 8443.3970 as claimed by Revenue, resulting in loss of customs duty payable against the impugned imports. Similarly parts of the goods were claimed to be classifiable under heading 8443.9100 whereas Revenue claimed that to classified under the heading 8443.9960. Investigation conducted by DRI revealed that

the goods imported were mis-declared as to their description as well as value.

17. On the above back drop, following difference arose between the members at the pre-deposit stage while directing pre-deposit. Accordingly following reference was made for opinion.

"Whether the applicants to be granted unconditional stay in all four appeals as arrived at by learned Member (J) or they were required to be asked pre-deposit of 50% out of customs duty of Rs. 82,71,874/- as held by Member (Technical). "

18. On behalf appellant it was submitted that factually facts of the case touch the classification for which that needs a look. Facsimile machines imported by appellant were network connectivity enabled which remain uncontroverted by customs. But DRI baselessly claimed that the imported goods is not functional without an extra ATA device. The machine being of special make and the model, that is classifiable in the category claimed by the appellant and shall be subject to nil rate of duty. So also, it was submitted by the appellant that statements were recorded under duress from the appellant which should not be used against it. All these aspects do not call for pre-deposit and adjudication was time barred.

19. Revenue contradicts the contentions of the appellant submitting that Facsimile machine imported by appellant were not capable of getting connected to automatic data processing machine for which that falls under heading 8443.3970. A plain and simple facsimile machine falls under 8443.3260. A facsimile machine not capable of getting connected to automatic data processing machine is recognized differently in market as different goods for which that falls under heading 8443.3970. Chapter note 5 of Chapter 84 Customs Tariff defines automatic data processing machine which is capable of:

(i) storing the processing programme or programmes and at least the data immediately necessary for the execution of the programme;

(ii) being freely programmed in accordance with the requirements of the user;

(iii) performing arithmetical computations specified by the user; and

(i) executing, without human intervention, a processing programme which requires them to modify their execution, by logical decision during the process run.

20. Prima facie, a plain and simple Facsimile machine is different from a Facsimile machine not capable of getting connected to

automatic data processing machine by its nature, technicalities and usage. Capability of connection attracts heading 8443.3260 and Facsimile machine of such character attracts the heading 8443.3260 and machine not capable of getting connected to automatic data processing machine attracts the heading 8443.3970. Thus capability of direct connection is criteria to distinguish a machine for usage thereof. When appellant claimed import to be duty free by above mis-classification, Revenue made through investigation and reality came to light.

21. Revenue's contention to make a case against the appellant was that the facsimile machines imported by notice bear model number. For each of the model, the literature issued by the manufacturer indicates the features including the feature of connectivity and networking enability. With regard to Facsimile Model No FT 931/981, FT 933/983, FT 837/987, FT 206/701/343, FL 206, FL 613, FL 402, FL 422, the technical literature produced by the noticee nowhere indicates that these machines have network connectivity features as it is understood in the common parlance of the trade. This document is an important and crucial evidence in as much as there are various models having different features. In case of the models, the network connectivity is clearly mentioned in the technical literature itself whereas in relation to Facsimile Machines/ Models in question, there is no mention of network connectivity feature. The technical literature describes features/facility of the Facsimile machine for the ease of use of the buyer. Absence of computer network connectivity feature, was also mentioned in the product literature.

22. Opportunity was given by DRI to the appellant to participate for practical demonstration with the assistance of experts to judge capable of connectivity of the impugned goods to the automatic data processing machine. The demonstration made in the presence of the appellant, expert Shri K.N. Swaminathan, Director of Micro Data System of Bangalore and DRI, resulted with the inference that machine subjected to demonstration was not capable of sending fax from one machine to another. The expert informed that if the, Facsimile machine is directed to the LAN that would not generate I.P. address. He further opined that if two or more, Facsimile machines are connected to LAN that would not enable to transmit or communicate or connect to each other without support of I.P. device like ATA. Para 9 to 12 adjudication order at page 41 and 42 brings out the truth.

23. The appellant failed to meet the technical test made by an independent expert who was agreed by both sides to conduct demonstration.

The ATA is a device used to connect one machine with other since the technology of one ATA recognizes I.P. address of the other to communicate. A detailed exercise during practical demonstrative showed that machine imported by the appellant failed to be connected to the Automatic Data Processing machine. Accordingly, Revenue came to the conclusion that the machines imported by the appellant were connectivity disabled with Automatic Data Processing machine.

24. Statements recorded from different importers of the same machine imported by the appellant proved that the machine has no inbuilt computer networking facility. Without an external aid the machine cannot be connected to net work. This, prima facie, leads to the conclusion that the import made by the appellant was not capable of getting connected to an Automatic Data Processing machine.

25. Revenue supporting the adjudication relied upon the technical literature and the result of physical demonstration as well as oral evidence gathered in the course of investigation to contend that the appellant was not entitled to nil rate of duty with the abatement of the supplier M/s. Panasonic Asia Pacific Pvt. Ltd. making mis -declaration of the goods deliberately to get duty exemption at the cost of Revenue. The product literature gathered by Revenue including price-list proved that the goods imported was not capable of being connected directly to Automatic Data Processing Machine.

26. In view of the aforesaid discussion, prima facie, it appears that there was deliberate mis-declaration with intent, to evade payment of customs duty and such action of the appellant calls for direction for pre-deposit since no time bar applies to a fraudulent deal, following the ratio laid down by Apex Court in the case of CC Vs. Candid Enterprise reported in 2001 (130) ELT 404 (SC). Accordingly the quantum of pre-deposit directed by the learned Technical Member which is 50% of the Customs duty levied is proper. The reference is answered accordingly.

27-. Registry to place the record before the appropriate Bench for passing majority order.

(Pronounced on the open Court on 07./O2/2014)

FINAL ORDER

28. In view of the majority order, the applicant is directed to deposit 50% of the duty confirmed against them within a period of 8 weeks and report compliance by subject to which the pre-deposit of balance amount of duty and penalty shall stand waived and its recovery stayed during the pendency of the appeal.