Ahuja Radios Vs. Collector of Customs

Ahuja Radios Vs. Collector of Customs

SooperKanoon Citation : sooperkanoon.com/10921

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-13-1997

Reported in : (1997)(93)ELT344TriDel

Appellant : Ahuja Radios

Respondent : Collector of Customs

Judgement :

1. This appeal is directed against the Order-in-Appeal dated 15-1-1991 of Collector of Customs (Appeals), New Delhi.

2. The appellants' imported a consignment of "Spare parts for Tape / Deck Mechanism" and claimed concessional rate of duty under Notification No. 188/87. Subsequently, however after the goods were cleared from customs, they were served with the demands notice alleging short levy on the impugned goods. The show cause notice alleged :- "The spring duty @ 150% + 40% + CVD (c)15% and the 1st Item attracts duty (c) 100% + 40% + CVD @15% and as such the demand for Rs. 50,985/- is issued." 3. The demand was confirmed by the Assistant Collector. The Collector (Appeals) upheld the order. Hence this appeal.

4. Arguing for the appellants, the Learned Representative of the appellants' company submits that the impugned goods are RP Head, Slids Switches, Coils and Springs. The Collector (Appeals) gave the benefit in regard to springs. In regard to other three items, while no reasons to deny them concessional rate of duty have been given to them this nevertheless obtained necessary clarification

from the Department of Electronics certifying that these goods conform to description given in the Notification and are eligible to concessional rate of duty. The goods were assessed by the Customs Authorities and no reasons whatever have been given for denying them the concession. In fact, the Collector (Appeals) committed an error apparent on the face of the record in recording that RP heads are mentioned in the invoice as "RP-7042-B7-6210" but the photo copy of the catalogue furnished by the appellants is for "RP-7042T (SM-III). Drawing our attention to the invoice, he explained that, in fact, there was no difference at all.

Similarly, he disputes the finding of Collector (Appeals) that Selector Switches are described as "type No. LSC-1A", and drawing our attention to the appeal papers submits that they, in fact, never imported this particular item.

5. The Learned DR while reiterating departmental arguments fairly concedes that there is no discrepancy between the invoice and the catalogue.

6. We have gone through the show cause notice. The entire show cause notice was extracted earlier by us while recording the facts of the case. The show cause notice is intended to put a person on notice to enable him to defend himself against charges raised against him. A person obviously would be in no position to put in his defence unless he is put on notice in regard to precise actions of omissions and commissions alleged to be committed by him. In the absence of this, a notice is not a notice but would partake the character of a command, something abhorrent to the basic principle of rule of law. On this ground alone, we are satisfied that the order needs to be set aside.

7. However, proceeding further in the matter, we observe that the Collector (Appeals) has not only proceeded from the wrong premises of alleging difference in the impugned goods and the literature, but has also not give any adequate reasons for rejecting the opinion of technical experts. It is a position of law and is well settled to need support from any citation that an opinion given by statutory authorities cannot be rejected lightly without adequate reasons. The Department of Electronics in the letter at page 34 of the appeal papers indicated that the item R/P head are magnetic heads for audio application, coils imported are covered under the category of RF coils, slide switches are having current rating less than 5

AMP/30 VDC. This clarification was given with reference to demand notice in respect of Bill of Entry No. 35238, dated 27th June, 1987 under which the goods were imported. In view of this, we fail to understand how this clarification is not relatable to the impugned goods as held by the Collector. The Collector (Appeals) has duly recorded clarification given by the Department of Electronics, and yet he refers to this clarification as "non-speaking clarification". Our attention has been drawn to the technical meaning of various items. For instance, magnetic tapes which are referred to in exemption Notification, are defined in Chambers Dictionary of Science and Technology as recording, reproducing or erasing tapes in magnetic recorder. We are therefore, satisfied that, considered in totality, including the type of show cause notice issued and the findings arrived at, that the appellants have succeeded in making out case in their favour. We therefore, set aside the impugned order and allow the appeal.