

Parle Beverages Ltd. Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-12-1997

Reported in : (1998)(99)ELT188Tri(Mum.)bai

Appellant : Parle Beverages Ltd.

Respondent : Commissioner of Customs

Judgement :

1. The appellant is a manufacturer of beverages. It imported and cleared some quantity of Tetra Brick aseptic packing material in July, 1986. The material was later found to be substandard. Appellant took up the mater with the supplier of the goods, who advised that the goods be returned. Therefore, it exported 207 reels out of the imported quantity of 933 reels in June or July, 1988, under claim for drawback of the duty paid on importation of the goods. The Department issued notice to the appellant proposing to deny the drawback on the ground that the goods exported could not be identified as part of the goods which were imported; and that the present market value of the goods was Rs. 50,000/-; and therefore, much less than the drawback claimed of Rs. 5.45 lacs and hence, the proviso to Section 76 of the Act came in the way of sanction. The importer replied to the notice contending that the identity was established and that drawback was payable. The Additional Collector did not accept these contentions, passed order denying the drawback. Hence this appeal.

2. The notice issued to the appellant did not allege that the goods could not be identified with those which had been imported. It proposed denial of the drawback

only for one reason that the market value was less than the draw-back claim. The Additional Collector's findings that the identity of the goods cannot be established goes beyond the notice and hence cannot be sustained.

3. Clause (b) of Section 76 of the Act provides that no drawback shall be paid if the market value of the goods exported is less than the drawback claimed. It is the appellant's contention that the Customs officers were not in a position to determine that the market value of the goods was Rs. 50,000/-. Its advocate contends that at the relevant time the appellant was a sole user in India of the particular kind of packing material known as "Tetrapack", and that was therefore, no market in the country for these goods. He further contends that the basis for the determination of market price has not been shown.

4. M/s. Tetra Pack specific Pvt. Ltd. the supplier of the material had, in its letter dated 23rd October, 1987, to the appellant advised as follows : "After comprehensive investigations, we have detected that the materials tested at your plant had oxidation which resulted in bad transversal ceiling. We recognised that the materials are not usable, therefore, we have to reprocess the same or supply from fresh production, if not possible. We can ascertain this only after we receive this stock back to Singapore." It is clear from this letter that the goods under export could not be used as 'packing material' in the condition they were in, and could possibly not be so used and even after reprocessing. The department's view that the goods had lost the character as packing material and become scrap, for purpose of determination of market value is not unreasonable. It is pertinent that the appellant was at no stage was able to show to the department that the goods had a higher value not less than drawback claimed. When asked whether the goods had been reprocessed and returned to India and used for packing, in the period before this appeal was taken up for hearing, advocate for the appellant did not have the information. This being the case, it is not possible for us to determine that the market value was not less than the drawback. We do not accept the suggestions that the matter be sent back to determine the issue; the appellant has not been able to get evidence of value till now, no useful purpose will be served in sending the matter back.

5. The decision of the Calcutta High Court in Hindustan Malleables and Forging P. Ltd. v. Asstt. Collector - 1992 (62) E.L.T. 7 relied upon the appellant has to be distinguished. In that case, writ petitioner had imported a X-Ray Machine, which was found to have some defective components. The components were exported to the supplier of the machine who sent the petitioner replacement of the defective components. In this background the Court held that, since the components sent on replacement had been levied to duty, drawback was payable on the goods exported and the value of such goods could be the value of the goods imported as replacement. In the present case there is no question of any replacement and hence the question of equating the value of the exported goods with that of the replacement does not arise.

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