

Trans Freight Containers Ltd. Vs. Commissioner of Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-29-1997

Reported in : (1998)(102)ELT410Tri(Mum.)bai

Appellant : Trans Freight Containers Ltd.

Respondent : Commissioner of Cus.

Judgement :

1. M/s. Trans Freight Containers Ltd., the appellant imported a consignment declared in the invoice accompanying it to be consisting of open top container cover and T.I.R. rope. On examining these goods, the Customs found that it consisted of 303 sheets of tarpaulin having eyelets at the edges. The tarpaulin ropes also imported were to be used for the purpose of fastening on the tops of open top containers so as to protect the cargo contained in them from the element as also from theft. In view of the nature of the goods, the Customs Department was of the view that they were consumer goods as defined in para 7(ii) of the Policy 1992-97, and could not be cleared under Open General Licence (OGL). On the objection being communicated to the notice of the importer, it waiver written notice. However, its representative was heard. It took the stand that the goods were imported against a specific contract to form part of the open top containers which it manufactured for export. They were therefore not consumer goods. The Additional Collector did not agree. He held the goods to be consumer goods, ordered their confiscation with option to redeem and also imposed a penalty on the importer. The importer appealed to the Collector (Appeals), who states in his order

that the appeal was limited to the tarpaulin and not to the rope and upheld the order except to the extent of setting aside the penalty. Hence this appeal.

2. The representative of the appellant contends that the goods were specifically imported against a specific contract and would form part of the open top marine containers which it manufactures for export.

They did not satisfy any human need directly and cannot be considered to be consumer goods. Alternatively, he pleads for leniency on the ground that the goods have been exported and the containers themselves could not have been exported without cover being provided.

3. The Departmental Representative contends that the goods are used to protect the cargo being carried in containers and therefore directly satisfy the human needs for security for transport of the cargo to ensure that it is not damaged in transit.

4. Consumer goods are defined in para 11 of the relevant Policy to mean "any consumption goods which can directly satisfy human needs without further processing and include consumer durables." What is required therefore to be satisfied before the goods can be considered to be consumer goods, is that they must be consumption goods; they must directly satisfy a human need, they must satisfy such a need without further processing i.e. in the form in which they are imported. The term "consumption goods" is not defined anywhere in the Policy. Going by the ordinary meaning, consumption goods would mean the goods which are used up exhausted or destroyed in the process of utilisation. (By extension to the definition "consumer durables" which would not be consumption goods in the manner so described have been included in the definition. We are however not concerned with this).

5. The Additional Collector, in his order, has not attempted to satisfy himself that the goods in question meets these requirement. His first reason is that the goods can be directly used without further processing and are therefore consumers goods. This by itself is insufficient to hold that these are consumer goods. By applying this criterion alone any distinction between the goods which anyone

would say are consumer goods or capital goods would be proved. Heavy items of machinery such as drills, lathes, etc which can by no stretch of imagination can be called consumer goods, can be used directly in the manner in which they are imported. That by itself does not make them consumer goods. The next reason that the Additional Collector offers is that they are components of open top containers which are consumer goods. However, he does not offer any reasoning as to why open top containers should be held as consumer goods. They do not, by themselves directly satisfy any human need. The fact that the goods are carried in them does not mean that they satisfy a human need. The term "human needs" in the definition has to be taken to apply to needs of human beings such as food, clothing etc. It would be absurd to say that carriage of goods by sea or air would directly satisfy any human need.

Here again, an activity undertaken by anybody could be said to result in satisfaction of a human need. Thus when a machine tool is being manufactured in a lathe it could be argued that the lathe satisfied the human need for manufacturing machine tools. Surely that would not be the intention of the policy maker. The Collector (Appeals), in his order, does not go into the matter in depth when he approves the Additional Collector's order.

5A. The goods are cut to size and shape. From drawing of the goods purchased enclosed, it is seen that the length is approximately 6.41 meters and width is 2.98 metres both sides narrowed at the edge. There are eyelets at interval of 14 cm along the edges. There is also double thickness reinforcement at the edges. All this is presumably done in order to ensure that the goods fit squarely over the top of the container. Having held that transportation of the cargo is not a human need, it would follow that the fact that these components are open top containers did not make themselves as consumer goods. In the manner in which these goods are imported, I fail to see how they can be said to satisfy any human needs. It could be argued that they would act as a cover of protection for human needs against cold and wind but that is not for the purpose for which they are manufactured or the object that they have been imported. A possibility to which the goods can be put to use cannot, in my view, take consideration as to the use of the commodity. What is to be considered is the intended or predominant use.

6. The Departmental Representative sought to contend, at this stage, that the publication by the Ministry of Commerce which sought to harmonise the Import Policy classification with the Customs Tariff called ITC Rapid HS Classification of Export and Import Items, goods classifiable under Heading 6312.00 were restricted being consumer goods. This heading cover tarpaulins of material other than cotton or synthetic fibre and would take into account the goods imported. Now this was not the reason for which the goods have been held as consumer goods. Further, this publication is only a concordance between the ITC Policy and the Customs Tariff and not the policy published under the Import (Control) Order. It has therefore at the most persuasive value on this Tribunal. Further when the licensing authority described the goods under Heading 6306.19 as consumer goods, which would cover a vast range of goods all liable under that heading it could not have considered such specific item of goods which could be classifiable under this heading. We are concerned in this appeal with a specific item which has been given a shape, size and composition and has a specific end use. Once it is decided that the goods would not fall within the definition of consumer goods as declared in the policy, the fact heading into which these goods would fall has been held to be consumer goods would not upset that policy. The decision must necessarily of course be restricted to the goods imported and under consideration in the present case.

7. The representative of the appellant pointed out that it had also imported plastic cover ropes described as plastic rope. However, in the appeal before the Collector (Appeals) does not appear to have raised this ground. The appeal before me specifically related to tarpaulin. It is therefore not possible for me to consider this item. This would raise another question because the redemption fine is for both the goods. Apportioning the fine on the value of goods I therefore set aside the redemption fine to the extent of Rs. 25,000/-.

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