Cc Vs. Cable Corpn. of India Ltd.

Cc Vs. Cable Corpn. of India Ltd.

SooperKanoon Citation : sooperkanoon.com/12789

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-04-1998

Reported in : (1998)(75)LC261Tri(Mum.)bai

Judge : S Bhatnagar, Vice-, A Unni

Appellant : Cc

Respondent : Cable Corpn. of India Ltd.

Judgement :

1. This is a departmental appeal filed with reference to the order-in-appeal No. S/49-122/90CL dated 13.11.1990.

2. At the outset the Id. counsel for the Respondent sought leave to mention that they had imported 'High Voltage and Partial Discharge System' comprising of eight units and had initially filed a Bill of Entry No. 9813 dated 29.8.1989 for home consumption, but subsequently at their request it was allowed to be converted into Bond Bill of Entry. At the time of importation and filing of the aforesaid Bill of Entry a question had arisen as to whether the whole should be treated as one single system and assessed and cleared as such under heading 9030.39 as claimed by them, or, as Department looked at it, the various units or items should be assessed separately on merits.

3. At the time of the assessment of the into Bond Bill of Entry for one of the items of the 'system', namely, Series Resonant Power Supply unit comprising of the

items mentioned in the adjudication order was classified by the Department under 8504.40. It has been wrongly mentioned in the adjudication order that the importer had claimed this heading, as actually it was the heading in which the Department had classified it but even this heading was sought to be changed at the time of filing of the ex-Bond Bill of Entry for this system, and as per present adjudication order it was classified under heading 8543.80.

Their appeal against this order was accepted by the Collector (Appeals). At this appeal stage they had made a submission, without prejudice to the initial system regarding the assessment of the whole consignment, as one system, under 90.30 and the Collector (Appeals) had passed the order with reference to this context upholding the heading 8504.40.

4. In the meanwhile the Assistant Collector had passed the order regarding some other units of the system separately and that order was also challenged and had ultimately reached the Tribunal stage before this case and the Tribunal had already passed Final Order No.C/4Q7/97-B2 see 1997 (71) ECR 936 (T) and he would like to draw attention to this order and the observations of the Bench therein. In the light of its observations the Tribunal thought it fit to remand the matter to the Assistant Collector with suitable directions. Since this order of the Tribunal No. C/407/97-B2 was also with reference to their original Bill of Entry No. 9813 filed initially and covers some of the units of the consignments and gives directions to the Assistant Collector for indicating the assessment regarding the remaining item as well the whole thing will have to be reconsidered by the Assistant Collector appropriately and therefore it is his request that this matter may also be remanded with suitable directions.

5. Shri A.K. Agarwal, Id. SDR has no objection to remand of the matter in view of the factual position outlined by the Id. counsel.

6. In response to a query from the Bench Id. counsel further clarified that even from the present assessment order it would be apparent that initially one Bill of Entry No. 9813 was passed in respect of the whole consignment. According to them one single system was imported for testing of cables and their request at the time of filing the initial as well as subsequent Bills of Entry was to this effect but it

was not accepted by the department at that time. They have in their written brief listed all the units which they have imported together and this may be cross checked with reference to the copy of the triplicate Bill of Entry initially filed for home consumption (subsequently converted in into Bond Bill of Entry); and as per their information the whole consignment was required to be cleared at one go at the time of Debonding.

7. We have considered the above submissions. We observe that since prima facie it appears that initially only one Bill of Entry was filed for the whole consignment for home consumption (and converted in into Bond Bill of Entry). Therefore if the ex-Bond of Bill of Entry was also filed for the whole consignment with the intention to clear it at one go for home consumption, it was required to be clarified as to how part assessments have been made and separate adjudication orders have been passed. We entirely agree with our Id. colleagues who have passed the order No. C/407/97-B2 dated 18.2.1997 that in order to ensure that a correct and clear picture emerges, Assistant Collector was required to complete the assessment of the entire consignment at one go indicating his reasons for not accepting the party's contention and assessing each unit of the system separately on merits. In fact this type of part assessment can create multiple proceedings with chances of error and serves no purpose because the correct and complete picture would emerge only when the entire matter is considered in its totality with the view points of both the sides duly recorded and a speaking order passed. In response to another query the Id. counsel stated that as far as his information goes the action is yet to be taken by the Department in terms of the aforesaid order of the Tribunal.

8. Since the aforesaid order of the Tribunal, in a manner of speaking, is relevant and affects the present portion of the assessment of the consignment and the whole of it was required to be considered together we find that the request for remand was justified. We, therefore, set aside the orders of both the lower authorities and remand the matter back to the Assistant Commissioner with the observation that the directions of the Bench in the aforesaid order of the Tribunal equally apply to all the units and parts of the consignments and the consignments as a whole must be adjudged at one go. The Assistant Collector will give an

opportunity to the appellants to make further submissions if any required to be made and produce such further documents as may be called for. The appeal is disposed of in the above terms. Cross objections are also disposed of accordingly.