

Cimmco International Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-01-1998

Reported in : (1998)(77)LC309Tri(Mum.)bai

Judge : R T Lajja, S Kang

Appellant : Cimmco International

Respondent : Cc

Judgement :

1. The appellant filed this appeal against the order-in-appeal dated 19.4.1994 passed by the Collector.of Customs (Appeals), Bombay.

2. Heard Shri Pankaj Bhargava, Sr. Finance Manager and Shri R.S.Sangia, JDR.3. In this case M/s Cimmco International had imported and cleared two consignments of pruning shears (Handtools) under the bill of entry dated 24.8.1983. The revenue issued a less charge notice under Section 28 of the Customs Act, 1962 on 24.8.1983. The Assistant Collector Customs in adjudication order confirmed the less charge holding that the goods were cutting device, a category of cutting plier and hence assessable under 51A of Central Excise Tariff. Thereafter the appellants filed the appeal before the Collector of Customs (Appeals) Bombay and before the Collector the appellants pleaded that the less charge memo was signed and issued on 24.8.1983. Therefore the less charge notice was not issued within six months from the date of payment of duty. Therefore, the less charge claim was time barred. The Collector in the impugned

order after relying upon the decision of the Tribunal in the case of *Almelo Laboratories Pvt. Ltd. v. Collector of Customs* , held that less charge notice was within time. The Collector of Customs in the impugned order has not given any finding on the merits of the appeal.

4. The Senior Finance Manager appearing on behalf of the appellant submits that even assuming the less charge memo was issued within six months time from the deposit of duty, they have a case on merits also.

We find that no finding was given by the Collector of Customs in the impugned order in respect of the claim of the appellant on merits. We find that appellant had not specifically pleaded in the memo of appeal in respect of merits of the case, but in the interest of justice, we find merit in the arguments of the Senior Finance Manager.

5. In view of the above discussions, we remand the matter to the Commissioner of Customs (Appeals), Bombay for deciding the appeal of the appellant on merits after affording an opportunity of personal hearing to the appellants. The appeal is disposed of as indicated above.

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