Mangla Products Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-16-1998

Reported in : (1998)(77)LC274Tri(Mum.)bai

Judge : J Balasundaram, S T G.R.

Appellant : Mangla Products

Respondent : Cc

Judgement :

1. The above appeals arise out of the order passed by the Additional Collector of Customs, Bombay and hence both the appeals were heard together and disposed of by this common order.

2. The brief facts of the case are that M/s. Mangla Products imported a consignment said to contain a quantity of 34.938. MTs of brass dross under Bill of Entry dated 24.11.1984. Acting upon intelligence received by the SUB that scrap was being imported into India in the guise of dross, the Bill of Entry was taken up for investigations and the goods were examined under the supervision of SUB. On examination of 10% of the consignment the goods were reported to contain genuine brass dross.

Samples were forwarded for inspection and the entire consignment was examined and found to consist of: It was also noticed that one of the varieties of brass dross was mixed with saw dust. The import of brass dross was permissible under OGL

Appendix 6, Item 2 of Part-Ill of AM 85 Policy whereas import of brass powder and brass ingots are covered by SI. No. 81 and 442 of Appendix 4 Part A of the Policy and, therefore, required a licence for their import. The Department was further of the view that brass powder and brass ingots are classifiable under Headings other than the Heading for brass dross and also attract higher rates of duty than brass dross. The rate of duty is indicated below:Description of goods ICT classification Rate of duty Brass dross 26.02/04 40% + 30% Brass powder 74.06 100% + 40% + CVD 13.2% Brass ingots 74.01/02 75% + 40% + CVD Rs. 3300 PMT The importers waived the issue of the show cause notice and also waived personal hearing. The adjudicating authority held that the brass powder and brass ingots were liable to confiscation in the absence of any valid licence to cover their import. He also held that the goods did not correspond in material particulars such as declaration of description made in the Bill of Entry and therefore, the provisions of Section 111(m) are attracted. He also held that provisions of Section 111(f) are attracted because brass powder and brass ingots which, being dutiable goods, and required to be mentioned in the import manifesto were not mentioned therein. He confiscated the brass dross because it had been used for concealing brass powder and brass ingots. An option to redeem the goods on pay-ment of a fine of Rs. 75,000/- was offered to the importers. The appeal by the importers is against confiscation and imposition of redemption fine, while the appeal by the Revenue is against the non-imposition of personal penalty on the importers by the Additional Collector.

3. We have heard Shri J.S. Agarwal, learned Advocate and R.S. Sangia, learned DR.4. We find that there is no dispute that the consignment on examination was found to contain a small percentage of brass powder in addition to a small percentage of brass ingots. The explanation that the brass ingots were not intentionally imported or imported with ulterior motive is contained in the impugned order and the adjudicating authority has also not imposed any penalty holding that there is any ulterior motive.

It is an admitted fact that brass powder was found mixed with saw dust.

The importers do not contest that the brass powder and brass ingots were not found in the consignment; nor do they dispute that these items require a valid import licence. In these circumstances, there is no reason to interfere with the findings of the adjudicating authority; however, the plea of the earned Counsel for the importers that once the value of brass dross declared by the importers has been accepted and once it is accepted that brass powder was mixed with saw dust which means that it was in the nature of sweepings, the value of brass dross is also to be accepted for the purpose of brass powder. As a result of this, the value of the goods would naturally get reduced and hence the redemption fine calls for some reduction. Accordingly, while upholding the order of the adjudicating authority, we reduce the redemption fine to Rs. 50,000/-. As regards the appeal of the Revenue, once we have already noted that there is nothing to substantiate the contention of the Revenue that the import of a small percentage of brass powder and brass ingots along with the bulk quantity of brass dross was with any ulterior motive, we do not see any ground for holding that the adjudicating authority ought to have imposed a penalty upon the importers.

5. In the result, Appeal No. C/459/87-B2 filed by the importers is dismissed subject to the modification of redemption fine from Rs. 75,000/- to Rs. 50,000. Appeal No. C/460/87-B2 filed by the Revenue is dismissed.