Cc Vs. Rainbow Fountains

Cc Vs. Rainbow Fountains

SooperKanoon Citation : sooperkanoon.com/13695

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-23-1998

Reported in : (1998)(79)LC375Tri(Delhi)

Judge : S T G.R., a Unni

Appellant : Cc

Respondent : Rainbow Fountains

Judgement :

I have carefully considered the facts of the case and the submissions made. In the order cited the Tribunal has inter alia held that the fountain submersible pumps imported by the appellants for being fitted in fountains cannot be treated as consumer goods as defined in para 7(12) of Import Export Policy, 1992-97, as such pumps require further processing and are required to be fitted into the decorative fountains, and cannot be used as such. It was held that the said goods were therefore freely importable and did not require a licence for their import. As the aforesaid order of Cegat (sic) the issue involved in the present Appeal, I set aside the (sic) confiscation and levy of penalty on the ground of goods being restricted for import and allow the appeals.

Being aggrieved by this order, the Revenue has filed the present appeal.

2. The facts of the case, briefly stated, are that the Respondents herein imported 2 consignments of submersible pumps and nozzles for fountains. The Assistant

Commissioner confiscated the goods on the ground that they were consumer goods and had been imported without a licence. The respondents herein filed an appeal before the Id.

Commissioner Appeals who followed the Order No. A-2603/96-NB dt.

3.12.1996 of this Tribunal and held that the submersible pumps were meant for being fitted in fountains and, therefore, cannot be treated as consumer goods for purposes of Para 7(12) of Import Export Policy 1992-97.

3. Shri A.K. Agarwal, the Id. SDR appearing for Revenue, submits that the catalogue supplied by the manufacturer indicated that these pumps could be used for emptying of shafts and pits, pumping out flooded waters, pumping out waste water from washing machines, lowering of the groundwater level, garden irrigation from ponds and wells. He submits that this clearly indicated that these pumps are capable of being used elsewhere and thus, were consumer goods and required a licence for their import. He submitted that the Id. Collector Appeals erred in incorrectly applying the Tribunal's judgment in as much as the Tribunal in that judgment held that submersible pumps for fountains cannot be treated as consumer goods. The Id. DR submitted that the Tribunal's judgment was applicable to such type of goods where the pumps are specifically designed for fountains and are not capable of being used elsewhere as was stated in the impugned order by the Ld. Commissioner Appeals. The Ld. DR, therefore, prayed that the appeal may be allowed.

4. None appeared for the Respondents herein. However, the issue being one which was decided by the Tribunal, we proceeded to decide the issue.

5. Heard the submissions of the ld. DR. Perused the evidence on record.

We note that in the brief facts it has been stated that the respondents herein imported 2 consignments of submersible pumps for fountains. We also note that in the brief facts of the case, the Commissioner of Customs has described the goods as submersible pumps and nozzles for fountains. Thus, both in the impugned order as well as in the Appeal before us, the imported goods have been described as submersible pumps for fountains. The question, therefore, arises whether these submersible pumps require a specific licence as consumer goods or did not require the licence. A reference was made to Para 7(12) of the Import Export Policy 1992-97 which defined the consumer durables as 'any consumer goods which can directly satisfy human needs without further processing and include consumer durables and accessories thereof. The Respondents herein are actually manufacturers of decorative fountains. The pumps have been described as submersible pumps for fountains which clearly indicates that the goods are not consumer goods as they need further processing or fitment in a system for being used. We also note that the goods covered by the Tribunal's Order relied upon by the Id. Commissioner (Appeals) were also described as submersible pumps for fountains. Having regard to he fact that submersible pumps for fountains are not goods which directly satisfy human needs and, therefore, they cannot be treated as consumer goods for the purposes of para 7(12) of the EXIM Policy 1992-97.

6. Having regard to the description of the goods and the discussions as above, we find that the ratio of the decision of the Tribunal in that case is applicable to the present case. In view of the above findings and following the ratio of the judgment of this Tribunal, we do not find any legal infirmity or factual inaccuracy in the impugned order.

In the circumstances, the impugned order is upheld and the Appeal is rejected. Operative part of the Order was pronounced in the Court.