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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-28-1998

Reported in : (1998)(79)LC588Tri(Delhi)

Judge : J T P.C., S Kang

Appellant : Cc

Respondent : Sony India P. Ltd.

Judgement :

1. Short question involved in this matter which survives before us is whether hand tools such as screw driver, bit Tweezer, plier, wire stripper etc. are to be treated as consumer goods or they are to be treated as non-consumer goods i.e. capital goods. The adjudicating authority has held the goods to be capital goods. Therefore, this appeal has been filed by the Revenue contending that these are consumer goods and the licence is required for their importation.

1.2. In order to appreciate the aforesaid controversy the reasoning of the adjudicating authority, namely, Commissioner of Customs after having examined the definition of capital goods and consumer goods, has come to the following conclusion: It goes without saying that the items are of high quality precision types and are meant for professional work. They would not be used in a household or domestic purpose or by an ordinary consumer. They are eminently suited for industrial application, that too, any high-tech industry, like hi-fi Audio Systems.

merely because the defining of capital goods refers to machine tools, it does not mean that hand tools of this nature are necessarily excluded from the category of 'capital goods'.

1.3. As against the aforesaid finding of the adjudicating authority, the appellant-Commissioner has urged in the memo of appeal as follows: The decision of the Commissioner and the grounds shown therefore, are not supported by the provision of the Import Policy and the ITC(HS) classifications of Export & Import items for the period April-1992 March 1997, for the following reasons: i) The Commissioner's view pre-supposes that the import policy makes a distinction between a hand tool used exclusively in an industry and a hand tool which is used by the general public as consumer.

However, the Import Policy and ITC(HS) does not draw any such distinction. On the contrary the entries under columns 3, 4 & 5 of Chapter 82 of ITC(HS) classifications of items shows that the various types of hand tools like pliers, Tweezers, Screw driver etc.

have been treated as consumer goods without any qualifying remark regarding their industrial use or otherwise. As long as the hand tool imported is a screw driver or a tweezer or any such item specified in the said classification of items, no further distinction can be made.

ii) That hand tool, for specified uses are also treated as consumer goods is further confirmed by an entry like that against EXIM Code 82055903 which reads as 'Hand Tools' for specified uses, such as watch making tools, goldsmith tools. Similarly, there are other items like Metal working hand tools or Wood working hand tools, hand tools for pedal operated grinder wheels with frame works, metal working hack saws, metal cutting shears and similar goods. All of these can be used in an industry or by other general consumers as well. All these items have been treated as consumer goods as per the policy. Therefore, it would not be proper to bring in such a distinction as has been done in the Adjudication order.

iii) The definition of Consumer goods given on pages of the Export and Import Policy (1992-97) reads as under: 'Consumer goods' means any consumption

goods which can directly satisfy human needs without further processing and include consumer durables and accessories thereof.

The definition does not make any distinction between an industrial consumer and other than an industrial consumer.

iv) The concept that a hand tool will be consumer item only when it is to be used in a household or for domestic purposes or by an ordinary consumers is not supported either by the definition of the consumer goods given in the Import Policy or by the categorisation of such hand tools as consumer goods in the ITC(HS) classification of items. When the policy itself does not make any such distinction or classification, it is felt that such concept cannot be introduced while interpreting or implementing the said policy.

2.1. Learned JD, Shri R.S. Sangia, has reiterated the aforesaid grounds taken by the Revenue in its memo of appeal.

3.1. Opposing the contention Id. advocate, Shri V. Lakshmi Kumaran for the respondents has submitted that the reliance placed by Commissioner on ITC(HS) classification is not correct inasmuch as this has been brought into force only w.e.f. 25.3.1996 whereas the present import has been made before 23.1.1996. He has also submitted that the reasoning adopted by the adjudicating authority is correct. He gives an example that even in the category of hand tools there may be ordinary hand tools which a layman can use in homes but in the same category there may be some hand tools which can only be used in industries. A distinction will have to be made on the type of hand tools and not that all hand tools are necessarily to be treated as consumer goods. A similar situation exists in the present case. He submits that all these tools are required for assembling T.V. in the manufacturer's factory.

These are not ordinary tools which a person in a home can use. These are, therefore, he submits, not consumer goods and have been rightly held by the lower authority as capital goods. He also points out that the person importing the goods is also relevant. In the present case, the import has been made by a T.V. manufacturer. It cannot, therefore, be alleged from any angle whatsoever that the

imported goods are consumer goods.

4.1. We have carefully considered the pleas advanced from both sides.

We are inclined to agree with the submissions of the learned advocate for the respondents. Reliance placed by the Commissioner of Customs on ITC(HS) is not correct inasmuch as that classification has been brought into force after the importation of these goods. Therefore, having regard to all the facts and circumstances of the case, as set out above, we dismiss this appeal of the Revenue.

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