

Monito Enterprises Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-11-1999

Reported in : (1999)LC212Tri(Mum.)bai

Appellant : Monito Enterprises

Respondent : Commissioner of Customs

Judgement :

1. The question for consideration in this appeal is the classification of goods described as parts of fuel injection equipment and overhaul kit. The importer claimed classification of these goods under Heading 8409.99, i.e., parts suitable for use solely or principally with the engines of Heading 84.07 or 84.08 which are respectively for spark-ignition reciprocating or rotary internal combustion piston engines. The Assistant Commissioner did not accept this classification.

He classified the rubber buffer under Heading 4016.99, nylon rings under Heading 3926.90 and overhaul kits by applying Section 19 of the Act under Heading 8485.90 at the rate of 50% duty and classified spring under 7320.90 and shaftseal, oil and others under Heading 8485.90. On appeal from this order the Commissioner (Appeals) confirmed the classification except for nylon rings which he said should be classified under the appropriate head. Hence these appeals.

2. Oral arguments before us were made by Mr. Jitendra Shah, partner.

The arguments made before us were not clear to us. The request to clarify the arguments to make them very comprehensible did not meet with any success. So far as we could follow, the appellants' requirement is to refer the matter to the Supreme Court. This is also what appears from the copy of the written submission which is reproduced below :- "Court of Honour have served notice to the respondents in CEGAT matters that will be heard on 23-2-1999 against this importer with the burden upon department and rules thereto on standardise enforcement of Customs Act, 1962, on the contents served to them as recorded before Court of Honour.

It is very much clear directive of the Board, Central Govt, Parliament to file cross-objection before deciding Revenue on lingering adjourn matters that has to recur on every bill of entry present for clearance and with such rules held in own custody and with own injunction on rules of Law.

The very much fact is that under Section 19 to enforce rules of Law it is nothing but to forfeit the rights on using force and that is why forfeiture of property without any order but to fund and in treasury, without notice and any information to importer.

It is very much clear from waiver of Legal Court Notice to record statement before Court of Honour even on payment of Court fees and no information from Judicial Officer for 'UNDER CLEARANCE' IMPORTS justifying LEGAL CUSTODY on payment of insurance premium.

Thereby forfeiture of 'IMPORTER'S RIGHTS' being protected under Legal Injuries but non recorded FORFEITURE OF RIGHTS(sic) Therefore as prayed before Hon. Court of Honour what is accrued be disbursed has to be proclaimed on application of rules of Law, and time being in force.

Therefore being this importer PREVENTED on ACCRUAL OF BILLS of ENTRY on the same count 'CERTIFICATE OF ASSESSMENT' with constitutional classification of the FIRST SCH. and on examination and direction of the BOARD to PREVENT clearances is habitual and with use of force on such direction C/V-30(4) CCU/97-98, dated 3-6-1998 and follow up on 5-6-1998 and 8-6-1999 as

recorded at Sahar Cargo Complex and Sahar Airport Police Station, use of FORCE is imminent of the department, the matter rest upon NCs cross recorded before Law and Legal Authorities to initiate action against culprit with only alternative to prevent as per Law, finding involvement of regulatory matters.

With the enclosed order of the Criminal Court the matter is very much binding on provision of service in the interest of REVENUE so decided with panchnama made by the Chief Commissioner of Customs as the member of the CBEC every properties are suspended to clear as the similar matters are pending before CEGAT-the Tribunal and no any bills of entry cleared without follow up direction of the Board, forfeiture direction of the Preventive Department is imminent and that is why accrual with the Custodian, Treasurer.

With such own injunctions and approval be pleased further to find yourself convinced that as per direction of Board, there cannot be any Governance of the Law than Tribunal, then be pleased to find yourselves on going through the prima facie matters to file 'CROSS OBJECTION' before the Tribunal to draw the statement of the cases recorded to furnish the same before the Hon. Supreme Court of India providing efficient services hereto having jurisdiction to prevent clearances of imports from true declarations filed, with QJA own injunction; before 23-2-1999 the hearing date C/225/89, C/325/89 and such related execution of order matters pending before them also arise from Writ Petitions WP/1787/93, WP/1948/95, WP/1992/95 and legal injuries while preventing clearance indefinitely to enforce Customs Act, 1962.

Therefore, we the importer not being protected under- Section 14 bills of entry format and under Section 19 rules of Law format we shall have efficacious remedy from the drawn statement of the Revenue Tribunal -treasured fund, property and said unclaimed with Tribunal orders.

3. We have therefore referred to the submissions made in the memorandum of appeal. The first ground in the appeal is that the order of the Assistant Collector had been passed in contravention of the principles of natural justice because the appellant was not heard. However, the Assistant Commissioner records in his order that the appellant was represented at the hearing and that he considered the

arguments and there is no specific averment in the appeal that this is not the case.

It cannot therefore be said that there is any violation of principles of natural justice.

4. We, however, find considerable merit in the other arguments that no satisfactory reason has been given for not accepting the classification claimed by the appellant. The order of the Assistant Commissioner is in three sections. The first section is entitled "facts" dealing with the presentation of claim of bill of entry; the second section "findings" giving some reason for classification of nylon rings and rubber buffer according to the explanatory notes to Chapter 84. No reasons are given in the findings for classification of the other goods. In the third part entitled "order", the Assistant Commissioner merely says that he is not able to agree with the claim for classification made by the importer.

5. It will be evident from this that the Assistant Commissioner has not given any reason except in the case of rubber buffer and in the case of overhaul kits. The Commissioner (Appeals) accepted that the classification of nylon rings under Heading 3926.90 "is not related to any grounds" and has ordered that it should be classified under an appropriate head. Therefore nylon rings remain unclassified.

6. In our view the Assistant Commissioner has erred in applying the provision of Section 19 of the Customs Act. This provision lays down criteria for assessment of goods consisting of set of articles "except as otherwise provided in any law for the time being in force", classification of the goods is to be made in accordance with the import tariff, not of the Customs Tariff Act and such classification is governed by the general rules for the interpretation of that tariff.

The classification of the goods therefore would have to be done by reference to these rules, particularly Rules 3(a), (b) & (c). This is clear from Rule 2B which provides for application of rule or in determining classification of goods consisting of more than one materials or substance. We do not have the details of the goods of which overhaul kits are composed and are unable to give any conclusion.

The classification of goods will have to be made by the Assistant Commissioner with reference to the goods of which these kits are made by reference to these

rules. A speaking order will have to be passed in respect of these goods as well as the other goods.

7. Accordingly, we allow the appeal, set aside the impugned order and remand the matter to the Assistant Commissioner for appropriate classification.

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