

Regent Electronics Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-22-1999

Reported in : (1999)(83)LC271Tri(Mum.)bai

Judge : G B Deva, R T Lajja

Appellant : Regent Electronics

Respondent : Cc

Judgement :

1. M/s Regent Electronics had imported two consignments. In one consignment 42 pieces of Compressors for milk chilling plant were imported. In another consignment 45 Evaporators with couplings were imported. Separate bill of entries were filed for their clearance. In the show cause notice dated 20.5.1991, it was alleged that the appellants had imported spilt Airconditioners of Toshiba brand and that the goods should be assessed as spilt airconditioners. The matter was adjudicated by the Additional Collector of Customs who confiscated the goods imported, imposed the redemption fine of Rs. 4lacs and a penalty of Rs. 1 lac and further ordered that the goods imported under the two separate bills of entries be clubbed together for classification as spilt Airconditioners. On an appeal the order passed by the adjudicating authority was confirmed.

2. Shri V.M. Doiphode, learned Advocate appearing for appellants submitted that the goods were imported in two separate consignments.

Two separate bills of entries were filed and that the parts imported were not complete to make the spilt Airconditioners. He referred to the adjudication order wherein it has been observed that certain parts to make the spilt Airconditioners were missing. It was his plea that the goods had to be assessed separately under different bills of entries and they could not be clubbed together to assess them as spilt Airconditioners. He submitted that similar issue has come up before the Tribunal in the case of Vishal Electronics Pvt. Ltd. v. Collector of Customs, Bombay and the Tribunal taken a view that there was no justification for clubbing the various consignments to allege in that case that a complete video camera sets had been imported. He submitted that there are other decisions also on the same point. He also mentioned that the reference in the show cause notice that the appellant had abandoned the goods was not correct. The appellants were interested in the clearance of the goods. He, further, submitted that even if the goods have been auctioned they will like the sale proceeds to be given to them as per law. He, further, submitted that in the facts and circumstances of the case there was no justification for imposition of redemption fine and penalty.

3. In reply Shri S. Ramanathan, learned JDR submitted that the allegations were clear as made out in the show cause notice. The goods imported were not as per the appellant's own orders and that had been admitted by them in their statement before the Customs authorities that what has actually been received were spilt Airconditioners. As regards the Tribunal decision, he submitted that the lower authorities had relied upon the Supreme Court decision in the case of Sharp Business Machines Pvt. Ltd. v. CC Bangalore Tribunal in the case of Vishal Electronics Pvt. Ltd. had distinguished the Supreme Court decision on facts. It was his plea that as the fact in this case were covered by the Supreme Court decision in the case of Sharp Business Machines Pvt. Ltd., a correct view have been taken by the lower authorities.

4. We have carefully considered the submissions. We find that the lower authorities had relied upon the Supreme Court decision in the case of M/s Sharp Business Machines Pvt. Ltd. (Supra). The learned Advocate submitted that the facts in the present case were distinguishable from the facts before the Supreme Court in the case of M/s Sharp Business Machines Pvt. Ltd. and that facts were

akin to those before the Tribunal in the case of M/s Vishal Electronics Pvt. Ltd. 5. We find that the Tribunal has analysed the facts in the case of M/s Vishal Electronics Pvt. Ltd. and had discussed the Supreme Court's decision in the case of M/s Sharp Business Machines Pvt. Ltd. in para seven of their order. Reference has also made in para ten of the order.

6. As we consider that the benefit of the Tribunal decision was not available to the learned Appellate Authority and facts of the case have to be gone into in detail with reference to the Supreme Court decision in the case of M/s Sharp Business Machine Pvt. Ltd. vis-a-vis Tribunal decision in the case of M/s Vishal Electronics Pvt. Ltd., we consider it to be a fit case for remand to the Appellate Authority.

7. Taking all the relevant facts into consideration of the case, we remand this matter for de novo consideration in the light of the decisions referred to by the learned Advocate, to the Commissioner Customs (Appeals) who should provide an opportunity to the appellants to present their case and then pass a speaking appealable order as per law.

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