

Tony Electronics Ltd. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-01-1999

Reported in : (2000)(88)LC496Tri(Delhi)

Judge : P Jain, Vice, S Kang

Appellant : Tony Electronics Ltd.

Respondent : Cc

Judgement :

1. The appellants filed this appeal against the order-in-appeal passed by the Collector of Customs, New Delhi.
2. The brief facts of the case are that appellants were sent ten pieces of Calender Rolls for repairs and reconditioning out of India as the same repairs cannot be undertaken in India. The said repair rolls were reimported into India. The appellants claimed the benefit of Notification No. 204/76-Cus. dated 2.8.1976 for basic customs duty. The appellants claimed that the additional duty of customs as NIL on the ground that the same is not chargeable under Section 3 of the Customs Tariff Act. The plea of the appellants in respect of additional excise duty of customs was not accepted by the adjudicating authority. The appellants filed appeal and the same was dismissed.
3. Learned Counsel appearing on behalf of the appellants submits that the Calender rolls were originally imported on payment of customs duty including the

additional duty under Section 3(1) of the Customs Tariff Act, 1975. He submits that the goods were sent for repair and reconditioning and were reimported into India and when the Revenue authorities admitted that these are repaired goods and granted exemption under Notification No. 204/76-Cus., dated 2.8.1976 from the Basic customs duty, therefore, the additional duty in terms of Section 3(1) of Customs Tariff Act is not leviable. He, therefore submits that the repair of reconditioning goods cannot be included in the expression "produce" or "manufacture". He further submits that as the additional duty of customs is leviable only on produced or manufactured goods and not on repaired and reconditioned goods. He relied upon the decision of the Tribunal in the case of Collector of Customs, Cochin v. Im Kemex India Ltd. Verma Sports Industries v. Collector of Customs 4. The learned JDR Shri R.S. Sangia appearing on behalf of the Revenue submits that Section 3 of the Customs Tariff Act levies Additional duty of customs equal to Excise duty leviable on the like article if manufactured or produced in India. He submits that there is no exemption on the like articles from payment of excise duty. Hence the additional duty of customs is leviable. He, therefore, prays that the appeal be dismissed.

5. In this case the appellants reimported into India the Calender rolls after having been exported for repair and the contention of the appellant is that these goods were not liable to additional duty of Customs under Section 3(1) of Customs Tariff Act.

3. (1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable, shall be calculated at that percentage of the value of the imported article.

Explanation:-In this section, the expression "the excise duty for the time being leviable on a like article if produced or manufactured in India" means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India, or, if a like article is not so produced or manufactured,

which would be leviable on the class or description of article to which the imported article belongs, and where such duty is leviable at different rates, the highest duty.

6. Admittedly, there was no exemption granted to like articles from payment of excise duty. The Notification No. 204/76-Cus. dated 2.8.1976 exempts all articles, when reimported into India after having been exported for repairs from so much of duty of Customs liable thereon under the Customs Tariff as is in excess of the duty of customs which would be leviable if the value of such re-imported goods were made up of fair cost of repairs carried out only.

7. The contention of the appellant is that no excise duty is chargeable on repaired goods. We find that goods imported are Rolls and as per Section 3(1) of the Customs Tariff the additional duty of Customs is chargeable on these goods will be equal to the excise duty for the time being leviable on like articles if produced in India. Hence we find no force in this contention of the appellant. The ratio of the decision relied upon by the appellants is not applicable in the present case as in the case of *Verma Sports Industries v. Collector of Customs* reported , the goods in question were exempted from payment of Central Excise duty under Notification. Therefore, in this situation the Tribunal held that when the goods were exempted from payment of excise duty, the additional duty of customs under Section 3(1) of Customs Tariff Act is not leviable. In the other case *Collector of Customs, Cochin v. Im Kemex India Ltd.* the Tribunal held that the waste and scrap are mere collections of used, worn-out, obsolete and scrap items. Thus they cannot be held as goods manufactured as a result of transformation which means that the resultant product emerges from a raw material into an intermediate or finished product. Hence the additional duty of Customs under Section 3(1) is not leviable.

8. In the present case the appellants imported the Calender rolls and the Calender rolls or like articles are not exempted from the excise duty. Therefore, in the absence of any exemption for payment of excise duty, the additional duty of Customs is leviable as held in the impugned order.

9. In view of the above discussions, we find no infirmity in the impugned order and the appeal is dismissed.

10. Agreeing with the conclusion reached by my learned Brother, Judicial Member, Shri S.S. Kang, I would add the following words.

11. Customs duty has been charged on the article Calender Rolls in the form as it has been imported i.e. as Calendering and other rolling machines classifiable under a particular Tariff Heading 84.20 of the CTA 1975 (as amended). While charging basic Customs duty, reference has been made to a Notification 204/76-Cus. dated 2.8.1976 because the terms of the said notification have been satisfied.

12. Question before us is regarding the chargeability of the additional Customs duty as laid down in Section 3 of the CTA, 1975 (as amended).

Those provisions, inter alia, lay down that the additional Customs duty is also chargeable on the imported goods (article) equivalent to the duty chargeable on similar goods manufactured in India or if such goods are not manufactured in India, they would be charged to duty equivalent to Central Excise duty had those been manufactured in India.

13. Important point to note, in these provisions is that neither the basic Customs duty nor the additional Customs duty is chargeable with reference to the process or the method by which such goods have been brought into existence abroad and then brought into India. Customs Tariff Act does not make any distinction regarding applicability of rate of duty on the basis of process of manufacture or of processing done upon certain materials to bring into existence the imported goods.

14. It is only Notification No. 204/76-Cus. dt. 2.8.1976 which recognises the fact where an imported goods has been brought into existence by a process of repairing of goods already imported and re-exported for the purpose of repairing. That notification exempts the goods from Customs duty from so much of the duty as is in excess of the duty chargeable on the value of repairs plus the expenses on transportation and insurance both ways (up & down).

15. Likewise, there should be a notification exempting from additional Customs duty. In the absence of any such notification, additional Customs duty has to be

charged on the goods, as these have been imported, without reference to the method adopted for manufacture of such goods in a foreign country.

16. Learned advocate places emphasis on the fact that admittedly, the goods had been subjected to duty (both basic and additional Customs duty) once on its original importation. Goods were sent for repair outside the country and now these have been re-imported after repairs.

It is well known that 'repairing' is not manufacture and therefore, repaired article does not attract any further liability of excise duty.

He relies on . Learned advocate's submission, in my opinion, is not correct because the concept that excise duty is leviable on the act of manufacture' cannot be extended to additional Customs duty as all Customs duties (whether basic, additional or any other) are leviable on the event or act of importation of the article/goods. For this proposition, I rely on 17. It is a different matter that policy-wise, no additional Customs duty should be charged or it should be charged on less value equal to cost of repairs plus transportation as basic Customs duty. That policy can be effected by issue of suitable exemption notification and not by the process of construction of provisions of law.

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