

Commissioner of Customs, Acc Vs. Ruby Impex Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-24-1999

Reported in : (2000)LC392Tri(Mum.)bai

Appellant : Commissioner of Customs, Acc

Respondent : Ruby Impex Ltd.

Judgement :

1. We are concerned in these two appeals with the classification for the purpose of Import Trade Control Policy of goods described as car covers imported by the respondent. These covers, we are told, are made of polyester and are used to cover a car when it is parked for long periods; e.g., overnight to protect its surface from the elements. The importer had claimed classification of these goods under Heading 8708.99. This heading covers parts and accessories of motor vehicle.

The department did not accept this classification. It was of the view that the goods were more appropriately classifiable as made up articles of textiles under Heading 6307.90. In the adjudication proceedings which were accordingly commenced, the Additional Commissioner passed orders confirming this classification and ordered confiscation of the goods with an option to redeem them on payment of fine. He also imposed penalty on the importers under Section 112 of the Act. The Additional Commissioner also found the goods to be undervalued and misdeclared.

2. On appeal from this order the Commissioner (Appeals) accepted the classification claimed by the importers. He was persuaded to do so in the light of the Tribunal's decision in CC v. Foreign Fashions - 1989 (40) E.L.T. 124 and by the fact that there had been practice earlier of classifying these goods under the heading claimed by the importer. He also did not uphold the finding with regard to the valuation and mis-declaration. This order is challenged by the department in these appeals.

3. On merits, we have to uphold the department's claim of classification of the goods. It is not the claim of the respondent that these goods are part of motor vehicles. It is not possible for us to accept that these goods are accessories. In deciding whether the covers of seats are accessories of a motor car the Supreme Court in Mehra Bros. v. Joint Commercial Officers -1991 (51) E.L.T. 173 said that the correct test would be whether the article or articles in question would be an adjunct or an accompaniment or an addition for the convenient use of another part of the vehicle or adds to the beauty, elegance or comfort for the use of the motor vehicle or is supplementary or secondary to the main or primary importance. These covers in question do not satisfy any of these requirements. The use of the car for the purpose of which it is designed and operated, does not require these covers. On the contrary no one can drive a car when the cover is put on it. The fact that these covers may protect the surface of the car from damage by the elements is, in our view, no ground to consider them accessories.

4. It is also to be noted that the Explanatory Notes to the Harmonized System of Nomenclature on which the Customs Tariff and the Import Trade Control Schedule are based specifically include in the Note Heading 6307 loose covers for motor cars. The contention of the respondents that these are not loose covers does not even require any comment.

5. We are unable to uphold the confiscation of the present consignment.

Advocate for the respondent has produced before us sufficient evidence, that both prior to and subsequent to the import of these consignments in July, 1997, identical goods have been cleared under the heading claimed by the respondent in the same Custom House. The bill of entry No. 1974, dated 16-7-1997 has been

produced in support of the contention that these goods have been cleared as claimed in pursuance of Order No. S/26/202/97, dated 1-9-1997 passed by the Additional Commissioner. Extracts of statistics publication of August 1999 of Impex Statistics Services shows clearance of Silvertch car body covers classifiable under 8708.99 in Mumbai Custom House and JNPT Custom House of considerable quantity in August, 1999. In such a situation confiscation of these goods for the reasons discussed above and imposition of penalty is entirely uncalled for and totally unjustified.

They are set aside.

6. Then remains question of valuation and mis-declaration. We are unable to find any mis-declaration in the fact whereas invoices declared the goods as make Dura-Silv Poly car cover and what was found to be was 'Silvertch'. This itself did not constitute any mis-declaration. As to the valuation the two bills of entry produced before us by the appellants refer to Silvertch car body covers of about the same value at which the goods have been imported. We are, therefore, unable to accept the appeal with regard to valuation. In the result the appeal is allowed to the extent that the Commissioner (Appeals) order classifying the goods under ITC purpose is not approved and classification being under Heading 6307.90. The appeal is otherwise dismissed.

7. We would like a copy of this order to be sent to the Chief Commissioner of Customs to examine for what reason there was to detain this consignment for more than a year when identical consignments were being released prior to and subsequent to the import of the seized consignment.

8. In view of the delay that has taken place it is hoped that the consignments covered under these two bills of entry under consideration are released promptly in accordance with our order, if the normal practice so warrants detention certificates are issued.

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