Nyloprint Engravers Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-27-1984

Reported in : (1985)(19)ELT415TriDel

Appellant : Nyloprint Engravers

Respondent : Collector of Customs

Judgement :

1.This appeal under Section 129(a) of the Customs Act, 1962, is directed against Order-in-Review No. 2, dated 3-7-1982/14-10-1982 passed by the Collector of Customs, Calcutta.

2. The Appellants had filed a Bill of Entry for clearance of a "Nyloprint Wash-out Unit" which was assessed under Heading 84.34 of the Customs Tariff Act, 1975 at 40% plus 10% plus CVD 8% by the Assistant Collector of Customs, Appraising Group IV by his Order dated 20-5-1982 and duty was paid on 28-5-1982. Subsequently, under re-examination of the classification along with the catalogue, it was found that the goods appeared to be assessable under Heading 90.10 and review proceedings were initiated by the Collector under Section 130(2) of the Customs Act, 1962. The importer waived his right to Show Cause Notice and was granted a personal hearing. Thereafter, the Collector passed the impugned order. He found that the Flat Exposure Unit "of the exposure machine is used to expose Nyloprint plates to ultra violet rays by being placed in contact with negatives so that the surface exposed to such a light got hardened and became insoluble". The un-hardened (non-exposed) portions of the nyloprint plates are required to be

washed-out by solvent in the "wash out unit". Following drying and re-exposure of the nyloprint plates, the print (illegible) is ready for use. He observed that photographic cameras, enlargers or reducers and photographic apparatus for preparing printing plates were excluded from the scope of Heading 84.34, as they were specifically covered in Chapter 90 (vide Page 1283 EN. 2 under Heading 84.34 CCCN). Photography is also defined as a process or art of re-producing images of objects on sensitised surfaces by the chemical action of light or other forms of radiant energy as X-rays or Gama rays. Ammonia printing machines using high pressure activic lamps emitting ultra-violet rays were known as photo-copying machines as they work on photographic principles and Explanatory Note on Page 1554 under Heading 90.10 also mentions photocopying machines which work by exposure to ultra-violet rays. He concluded that the machine in question is more specifically covered by the description "apparatus and equipment of a kind used in photographic and cinematographic laboratories under the Heading 90.10 and is correctly assessable thereunder. He rejected the contentions that similar goods have been assessed under Heading 84.34 in Madras Customs House and stated that even if a couple of such items have been so assessed, it cannot form the basis of an established practice. He ordered re-assessment and recovery of extra duty.

3. In the present appeal, it is contended that the literature and documents establish clearly that nyloprint wash-out unit is a device for washing out un-hardened portion of polymer coating from the printing blocks/plates and it has no other use at all. It was also imported for manufacturing activity of block making and nyloprint photo polymer plates as per Small Scale Industries Registration Certificate.

Heading 84.34 clearly covers "machinery; other than machine tools of Heading No. 84.45/48 for preparing or working printing blocks plates or cylinders". The subject goods not falling under sub-heading 84.45/48 and being accepted for working or preparing printing blocks/plates only, was correctly covered by Heading 84.34 and there was no justifiable reason to change the earlier assessment. Washing out of the un-hardened portion by polymer coating from the nyloprint plates is the only process of making printing blocks/plates. So, the machinery or equipment for such finishing process is universally held to be specifically covered by Heading 84.34. The fact that the Collector allowed clearance under Appendix-2, Serial No. 12(5) of the Import Policy for 1981-82 under OGL which covers Printing Machinery as Plate Processor shows that he considered it as a plate processing unit for ITC licence purposes but for levy of Customs, he took it to be an apparatus/equipment of a kind used in photographic or cinematographic laboratories falling under an altogether different chapter, i.e., Heading 90.10. This was unjustified and reveals observance of double standards for the same article. Further, the nyloprint wash-out unit has no use in such laboratories being designed for use only in the printing industry, and invoking Chapter 90 is contrary to Rule 3 of the Rules for Interpretation and shows prejudice on the part of the authority. Chapter 90 is intended to cover optical photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus and parts thereof. The subject machine being merely for washing and cleaning cannot be equated with photo-copying apparatus or thermo-copying apparatus or considered as covered by the category of Apparatus and equipment of a kind used in photographic or cinematographic laboratories. In terms of Rule 3, Heading 84.45/48 being more specific than 90.10, would be the correct classification.

The same article was imported earlier and evidence is produced to show that Customs Duty was all along assessed under Heading 84.34. For these reasons, it is requested that the order may be set aside, the goods may be re-assessed under Heading 84.34 and consequential refund of Rs. 1,77,616.38 Paise may be granted to the appellants. Shri Beri reiterated these contentions. With the help of manufacturer's printed literature, he explained that the function of the nyloprint wash-out machine manufactured by BASF (Germany) is only to wash away the unpolymerised portion of nyloprint plates for preparing printing blocks and the machine had nothing to do with photographic equipment. He filed a certificate to this effect from the Regional Institute of Printing Technology, Government of West Bengal. Shri Beri contended that even according to the Explanatory Notes to the CCCN, it was clear that this wash-out machine was not either included in Chapter 90.10 or excluded from Chapter 84.34. The machine itself has nothing to do with photography except that a film negative is supplied by the customer and from that a printing block is prepared using other equipment, the washing out being done by this separate machine. In fact Order No.1864-DLH/83, dated 31-10-1983, passed by the Appellate Collector of Customs, Delhi, had held that an Acuaquick special plate processor which prepares polymer plates/ blocks is classifiable under Heading 84 34 and not 90.10 of the Customs Tariff.

4. The S.D.R. stated that treating the machine in question as a printing machine for purposes of 1TC licence by the lower authorities was questionable, but the question here is regarding Customs classification. Section Note (1) of Chapter 16 which deals with machinery, mechanical appliances, electrical equipment and parts, stipulates that this Chapter does not cover articles covered by Chapter 90. The first thing, therefore, was to determine whether the goods fall under Chapter 90. The question is-are the goods of a kind used in photographic or cinematographic laboratories S.F. development tanks/trays/tanks for washing negatives, are examples of goods covered by Heading 90,10. Since the subject goods are akin to those goods, Heading 90.10 is attracted, because a washing apparatus is a necessary part of a photographic laboratory. Moreover, the meaning of photography is the taking of a picture by chemical action of light or other radiation on film, (page 1283 BTN). The learned Appellate Collector, whose order has been cited, has gone off at a tangent by trying to establish that the subject goods are not used in photographic or cinematographic laboratories.

5. In rebuttal, Shri Beri referred to the general arrangement of Chapter 84, as spelt out in the BTN, which is to cover a "field of industry" and Heading 84.34 specifically deals with printing, which includes machines for preparing printing blocks but does not include enlargers, contact printers and photographic apparatus for preparing such blocks. Keeping all this in mind, it would be clear to the Tribunal that the machine was correctly classifiable under Heading 84.34.

6. We notice that order dated 20-12-1983 is in respect of an "Acquaquick special plate processor" used for preparing plates/blocks from a processed negative of the printable matter exposed over polymer plates which is then put into the wash-out unit for washing out the non-image area and then dried. The Appellate Collector differed with the decision of a Collector's Conference and held that the goods were assessable under heading 84.34 and not 90.10. No appeal appears to have been

filed against this order. He held that there was little justification for treating it as an apparatus of a kind used in photographic or cinematographic laboratories. Observing that the Explanatory Notes cannot settle classification, if the opinions expressed therein involve deviations from settled rules of construction approved by our courts; and applying the commercial/common parlance test as relevant and germane; he justified the classification ordered by him. There is force in these reasons. We agree with the learned SDR that before coming to heading 84.34 it would be necessary to exclude Chapter 90. At the same time, no evidence has been led to establish that the wash-out unit is of a kind used in photographic or cinematographic laboratories, though they seem to have similarity with the goods like S.F. development tanks etc., mentioned by the SDR. The fact that for 1TC purposes, it is treated as Printing Machinery and the inclusion and exclusions clarified in the CCCN and relied on by the learned Advocate, cannot be ignored. We would, therefore, hold that the goods are correctly classifiable under Heading 84.34 and set aside the order-in-appeal. The appeal is thus allowed.