

impex Syndicate Vs. Collr. of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-17-2000

Reported in : (2000)(72)ECC187

Judge : J T J.H.

Appellant : impex Syndicate

Respondent : Collr. of Customs

Judgement :

1. The dispute in this case is whether the sewing machine motors imported by the present appellants were "consumer goods" in terms of the Exim Policy then in effect. The mind of the Collector is reflected in the following extract of his order: The dispute however is whether these motors are domestic or consumer items or parts thereof or whether they are industrial items. The learned advocate has not produced any evidence nor the importers have shown any literature or any other evidence which could justify treating the items as other than domestic items. The fact that they operate on a wattage of 90 is a clear indication that they are meant for domestic use. The description in the bill of entry indicates these machines as meant for sewing machines. Therefore, they are part of the domestic items. The cartons that they are meant for sewing machines. The invoice also describes them as domestic motors.

These facts were not disputed before me at the time of hearing.

Therefore, the literature by the supplier and produced by the importer himself indicates that the motors imported are domestic motors meant for had argued that in the case of Usha Sewing Machines, the machines had been treated as capital goods and he had cited number of bills of entry. However, that does not advance the case of the importers for treating the impugned motors as non-domestic or non-consumer items. It is not the case of the importers or the learned advocate that the impugned motors are meant for Usha Sewing Machines which have been imported vide the bills of entry indicated by them. Since the motors have been described in the invoice itself as domestic motors and the bill of entry also describes them as motors for sewing wattage on which they function is also domestic, I find the entire evidence to indicate that the motors are meant for domestic use.

2. The Collector proceeded to confiscate these goods valued at Rs. 4,75,383 CIF. He permitted their release on payment of fine of Rs. 4,00,000. He also imposed a penalty of Rs. 1,00,000 on the appellants.

Hence the appeal.

3. Shri Nankani referring to the findings of the Appraiser on the examination report in the bill of entry, argued that the speed rating of the imported goods as indicated by the RPM was such as would suggest their use in the industrial machine. It is his submission that the phrase "domestic motors" had been inadvertently/wrongly used by the suppliers thus creating the impression that they were consumer goods.

In reply to a very specific query as to the disclosure made in the sales literature and catalogues about the use of the contested goods, Shri Nankani conceded that although the literature was before the Collector to do the importers were unable to produce the same today before us.

4. Shri Nankani went at length about the definition of consumer goods and relying upon a number of judgments attempted to show that the contested goods did not qualify for thus phrase. I have seen the judgments. In the case of Lion Pencils (P) Ltd. v. CC 1997 (69) ECR 591 ball point pens had been imported without ink in the

cartridges. The Tribunal held that since the goods in this condition could not directly satisfy the human needs of writing, the goods could not be called as consumer goods. He also referred to the judgment reproduced in 1995 (57) ECR 567 [Dripless Faucets (India) v. CC]. This judgment draws strength from the Calcutta High Court judgment in the case of Trident Television Pvt. Ltd. v. CC , and holds that where further processing is required before the goods could be put to use, the phrase "consumer goods" could not apply.

5. I do not find either judgment as having any ratio to the present case. The contested motors are fitted with electric cords as well as foot-step switch and require merely plugging. Now plugging into a socket cannot be a 'process' in terms of the High Court order. It is evident on the examination of the sample that for being put into use the motor did not require any processing.

6. The judgment of the Tribunal in the case of CC v. Dujodwala Resins & Terpenes Ltd. 1999 (82) ECR 548 does not provide any guidance because it was clearly before the Tribunal that the user importer was a manufacturer and the imported goods were being used in the process.

7. Shri Patwari relies upon the Tribunal judgment reproduced in [CC v. Simac Group (India) Pvt. Ltd. judgment the Tribunal has held that in determining the issue the identity of the purchaser should be taken into account. Paragraph 19 of the judgment shows that catalogues were filed where the importers themselves admitted that the goods were domestic machines. But then the issue before the Tribunal in that case was of classification depending upon the user domestic or industrial and not whether the goods were falling under the negative list as consumer goods or not.

8. Before the Collector was the report of appraiser in which some doubt existed but the extract of the Collector's mind was made up on the study of literature of the supplier. Therefore the citation of the judgment of the Bombay High Court reported in 1980 ELT 717 (NMM Ltd. v.UOI) that the benefit in the case of doubt should go to the assessee cannot come to their rescue. In the absence of the literature the only means of verification of the correctness of the Collector's order has taken away from me.

9. At one stage of the proceedings Shri Nankani did seek time to once again attempt to produce the literature. I do not find this request tenable at this stage.

10. I therefore hold that the Collector's logic that the imported goods were consumer goods cannot be faulted.

11. Shri Nankani now comes to the question of quantum of penalty and fine. It is his submission that the imposition of penalty was not warranted in view of the firm belief of the appellant that the goods did not fall under the negative category. For this he draws strength from the Supreme Court judgment in the case of Akbar Badruddin Jiwani v. CC and submits that even the orders of 12. I have considered these submissions. The ration of the cited judgment cannot directly apply to the present case because the question whether the belief of the appellants was bona fide or not cannot be ascertained in the absence of the literature and catalogues nor is it possible for me to judge the argument on the excessive quantum of the fine in the absence of background data. Shri Nankani claimed that the specific reasons for quantification of the fine are not apparent on the face of the Commissioner's orders. The adjudicating Commissioner would arrive at the quantum of fine on a number of factors which would be available to him on the case records and would not normally or necessarily find their way in the adjudication order. I also notice a later judgment of the Supreme Court in the case of Novapan India Ltd. v. CCE in which the Court the Court has observed that the quantification of the fine would be done according to the facts and circumstances in each case.

13. I therefore, find no reason to reduce the quantum of fine. However in view of the submissions made, the penalty imposed upon the appellants is remitted in full. Subject to this modification, the appeal is dismissed.

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