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Pearl Engineering Polymers Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-19-2000

Reported in : (2001)(128)ELT65TriDel

Appellant : Pearl Engineering Polymers

Respondent : Commissioner of Customs

Judgement :

1. Issues raised in all these 5 appeals are identical and so we consider it advantageous to dispose of them by a common order.

Appellants in C/402 to 404/98-D are M/s. Pearl Engineering Polymers and their two directors. M/s. Pearl Engineering Polymers entered into an agreement with M/s. Zimmer, Germany for setting up Polyethyleme Terephthalic Chips (PET chips). As part of the agreement, M/s. had sent 112 volumes of books. They were imported during the period 1993 and 1994, pursuant to the agreement dated 4-5-1993. Show cause notices were issued invoking the extended period of limitation proposing to classify the goods under Heading 49.01 as also under Heading 49.11. Appellant contended that the imported goods were books and they are covered by Chapter 49 of the tariff entry and are wholly exempt from duty under Notification 107/93, dated 30-3-1993 and Notification 38/94, dated 1-3-1994. This contention was negatived by the adjudicating authority and consequently duty levied and penalty imposed. That order is under challenge.

2. Facts in M/s. Gujarat Perstorp Electronics Ltd. (Appeal No.C/417/97-D) are similar to the one stated above. There also the liability to duty on books imported and benefit of exemption notification are the issue.

3. Appeal C/466/97-D is at the instance of the Revenue. The grievance of the Revenue in this appeal is that penalty of Rs. 50 Lacs imposed on the appellant in appeal C/417/97-D was too low and it requires enhancement.

4. Identical issue came up for consideration before this Tribunal in Parasrampuria Synthetics Ltd. v. Commissioner of Customs, Neiv Delhi, 2000 (38) RLT 846 (LB). Larger Bench was faced with the issue as to whether the law stated by this Tribunal in Tractors and Farm Equipment Ltd. v. Collector of Customs, 1993 (68) E.L.T. 234 by a bench of two members is correct or the decision of co-ordinate benches in Roto Inks (P) Ltd. v. Collector of Customs,Tata Consultancy Service v. Collector of Customs, 1991 (53) E.L.T. 454, Collector of Customs, Madras v. Tata Elxsi India Ltd., 1995 (78) E.L.T.370, Laakshmi Cement v. Collector of Customs, New Delhi, 1996 (84) E.L.T. 271, is correct. After an exhaustive survey of the entire law, Larger Bench took the view that the law stated by this Tribunal in Tractors and Farm Equipment Ltd., 1993 (68) E.L.T. 234 is not sustainable. Accordingly, the Larger Bench took the view that printed materials imported are books coming under Tariff Heading 49.01 and are entitled to complete exemption under Serial No. 10 "printed books" falling under Tariff Heading 49 from customs duty. Consequently no duty is leviable on the printed books imported. This decision of the Larger Bench of this Tribunal is binding on us; as in the case of Larger Bench, in Pearl Engineering Polymers the contract was with M/s. Zimmer AG, Germany. This factual position also makes it abundantly clear that the decision rendered by the Larger Bench has to be followed.

5. In view of what has been stated above, we allow the appeals by the assessees and set aside the orders of the Commissioner imposing duty and penalty.

6. In view of our decision that the imported goods are books not liable to duty, no penalty could have been imposed on the company or its directors. So, the Revenue is not justified in pursuing appeal C/466/97-D for enhancing penalty of Rs. 50 Lacs imposed on M/s. Gujarat Perstorp Electronics Ltd. appellant in

C/417/97-D. That appeal has only to be dismissed and we do so. So, the appeals are disposed of as stated above. If the appellant or officers had deposited any amount, as contemplated by Section 129E of the Customs Act, that should be returned to the parties as expeditiously as possible, at any rate, within 4 weeks from the date of receipt of a copy of this order.

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