Ashish and Co. Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-12-1985

Reported in : (1986)(8)LC279Tri(Mum.)bai

Appellant : Ashish and Co.

Respondent : Collector of Customs

Judgement :

1. The Revision Application filed before the Govt. of India against the Order-in-Appeal No. S/49-62/80L dated 19-9-1980 passed by the Appellate Collector of Customs, Bombay statutorily stood transferred to the Tribunal for being heard as an appeal.

2. The undisputed facts were that the appellants M/s. Ashish & Co. were the manufacturers of Plastic moulded/fabricated articles metallised or plain. Their manufacturing activity includes manufacturing presentation articles and novelties.

3. During the Policy period 1979 A.M. the appellants imported 10 cartons plastic decorative pictures and claimed clearance against their Import licence bearing No. 2815183-dated 13-6-1978. The Customs objected to the clearance on the ground that the imported goods being three dimensional plastic decorative pictures which are used as such as consumer goods, the same are banned under Appendix 3 Item 750. After issue of show cause and after personal hearing, the Asstt. Collector of Customs ordered confiscation but allowed redemption on payment of fine of Rs. 11,000/-. It may be mentioned here that during the pendency of the

proceedings, the appellants sought clearance under another licence bearing No. 1904631 dated 16-11-1978, This licence was also not accepted by the Asstt. Collector on the ground that in terms of Para 32 of Policy Book, goods appearing in Appendix 4 cannot be imported. On appeal, the Collector (Appeals) confirmed the order of the Asstt.

Collector.

4. During the hearing of this appeal, Shri Akolkar for the appellants submitted that the licence which the appellants produced before the Asstt. Collector namely, Licence No. 1904631 clearly permitted import of items specified in Appendix.

5. The item imported squarely fell within the description mentioned in entry 431 of Appendix 5 and as such the Customs are not entitled to object for their clearance of the imported goods on the ground that the goods are Consumer items and the import of which is either banned or prohibited under Item 750 of Appendix 3 or entry 96 of Appendix 4.

6. Shri Pal for the Respondent Collector however supported the orders passed by the authorities below. He contended that the imported goods are not components and they are consumer goods which could be sold as they are. In support of his contention Shri Pal referred to the definition of the component and also relied on the decision of the CEGAT reported in 1984 ELT Page 157 Mangala Brothers v. Collector of Customs.

7. I have carefully considered the submissions made on both sides. The import in the instant case is not under O.G.L. It is against a licence.

Though the licence originally produced did not cover the import, the appellants were allowed production of another licence. Therefore, the question for consideration is whether the licence issued in favour of the appellants permits import of the goods imported. If the licence covers the goods imported then import cannot be objected to on the ground that other appendices prohibited import of such goods.

Unfortunately, in this case, the authorities below did not construe the terms of the licence, namely, the licence bearing No. 1904631. This licence is specific and it was valid for import of items shown in Appendix 5. So all items specified in Appendix 5 could be imported in terms of the licence. The only restriction specified in the licence is that the licence was subject to Para 32 of Chapter 6 of the Policy. As the licence stands, the goods imported need not be a component. As stated earlier, it permitted import of all the items mentioned in Appendix 5. Para 32 reads :- "As stated earlier, the value set out against (c) of Para 30 above in an automatic licence can be utilised for importing any of the items listed in Appendix 5; but such imports of the items sub-classified under sub entries (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xvii), (xviii), (xx) and (xxi) of entry 472 of this Appendix should not exceed 10 per cent of such value and those of any single item so sub-classified should not be more than Rs. 50,000. The licence holder may also import within the same value part (c) of the licence, any of the items appearing in Appendix 3 but not included in Appendix 4 upto a value of Rs. 50,000 per item, provided that the total of all such items does not exceed 10% of the value thereof ...It is expected of Actual Users (Industrial) that they will utilise the facilities given in this Para only to import such items as are in confermity with the respective provisions of their Industrial Licences or Registration Certificates." Now, this paragraph clearly prohibits import of items included in Appendix 4. The question therefore arises whether the imported goods fall under any of the items in Appendix 4. Shri Pal for the Respondent placed reliance on Item 96 of Appendix 4. This item reads :- "Any consumer goods, howsoever described, of industrial, agricultural or animal origin, not appearing individually in Appendices 5 and 8 or specifically allowed for import under Open General Licence. (750)" Appendix 4 lists absolutely banned items. But entry 96 specifically excludes consumer goods appearing individually in Appendix 5 and 8.

Therefore, it was necessary for the department to consider whether the imported goods appears individually in Appendix 5. No efforts appears to have been made by the authorities below in this regard. On behalf of the appellants, it was contended that the imported goods fall under Item 431 of Appendix 5. If the contention of the appellants is correct, then the Customs cannot object for the import on the ground that the imported item is a consumer goods and the same is banned either under Appendix 3 or Appendix 4. Neither Appendix 3 nor Appendix 4 imposes a ban on the import of items appearing in Appendix 5 specifically.

8. In the above view of the matter, I allow this appeal, set aside the orders passed by the authorities below and remand the matter to the Asstt. Collector for consideration afresh in the light of the observations contained in this order.