

Allied Enterprises Vs. Collector of Customs

Allied Enterprises Vs. Collector of Customs

SooperKanoon Citation : sooperkanoon.com/246

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-15-1983

Reported in : (1983)LC1759DTri(Delhi)

Appellant : Allied Enterprises

Respondent : Collector of Customs

Judgement :

1. The appellant imported a certain quantity of Matrix Board Stereo Fionas through the Port of Bombay in the year 1976. The goods were classified by the Customs authorities under heading No. 48 01/21(1) of the 1st Schedule to the Customs Tariff Act, 1975 (hereinafter referred to as Customs Tariff Schedule) and charged to Customs duty at 100% ad val (Basic duty) plus 20% ad val. (Auxiliary duty) and 30% ad val.

(countervailing duty). After clearance of the goods on payment of the duty so assessed, the appellants filed a refund claim before the Assistant Collector of Customs, Bombay on the ground that the goods should have been assessed under heading No. 84.34 of the Customs Tariff Schedule and not under 48.01/21 and that countervailing duty should have been charged at Rs. 1.60 per kg. as against 30% ad val. The Assistant Collector rejected the claim on the ground that the goods being in sheet form and being not impressed Matrix Board, they fell outside the scope of heading No. 84.34. He also rejected the appellants' contention as regards levy of countervailing duty holding that the countervailing duty rate had been changed with effect from 16-3-1976. The appellants thereafter

filed an appeal before the Appellate Collector of Customs who held that the goods had been classified and assessed to duty correctly and, therefore, rejected the appeal. Aggrieved with this order the appellants filed a Revision Application before the Central Government which has been transferred to this Tribunal under the provisions of Section 131-B of the Customs Act, 1962 as if it were an appeal presented before it.

2. In the Revision Application (hereinafter referred to as an appeal) the appellants have submitted that the goods were imported against an Import Control Licence dated 25-2-1976 which was issued for the licensing period April 1975 to March 1976. The goods were imported prior to the introduction of a correlation during the licensing period April 1976 to March 1977 between the classification adopted for goods in the Customs Tariff Schedule and the Import Trade Control Schedule.

In the new Import Trade Control Policy Schedule the revised classification of Stereo Flongs has been mentioned as heading 84.34. It has also been submitted that the expression "Impressed Flongs" and "Matrices" occurring in heading No. 84.34 of the Customs Tariff Schedule implied that the Stereo Flongs were used for impression. They also submitted that the Import Trade Policy Schedule does not make a distinction between Stereo Flongs which are impressed and which are not impressed. It is on this reasoning that the appellants have prayed for setting aside of the order of the Appellate Collector of Customs and grant of consequential relief.

3. The appeal was initially posted for hearing on 11-3-1983. At the request of the appellants, the hearing was adjourned to 14-4-83 on which date Shri Y.K. Narula, Manager of the appellants' firm, appeared, but stated that he had no instructions nor was he aware of the facts of the case and that, therefore, he had no submissions to make and that the appeal might be disposed of on the basis of the record. Appearing for the Respondent, Shri K.V. Kunhikrishnan, Junior Deptl.

Representative submitted that heading No. 84.34 of the Customs Tariff Schedule covered only Impressed Flongs and Matrices and would not cover within its scope the imported goods which are Stereo Flongs not impressed and in sheet form constituting the raw material for preparation of impressed stereo flongs. He

contended on this basis that the appellants had not made out a case in support of their claim for re-classification of the goods under the said heading.

4. We have carefully considered the submissions made by both the parties. The short point arising for decision in the present appeal is the correct classification under the Customs Tariff Schedule of the imported goods which are described as "Matrix Board Stereo Flongs" and have been imported in sheet form. The contention of the appellant is that the correct heading is 84.34 as against 48.01/21 under which the goods were assessed. The Revenue has stoutly opposed this contention.

Heading No. 84.34 covers certain items of machinery, apparatus and accessories connected with the printing industry. It covers, among other things, "Impressed Hongs and matrices. The appellants have based their claim on the classification of stereo flongs in the Import Trade Policy Schedule which does not make a distinction between stereo flongs which are impressed and which are not impressed both of which, they urge, have been shown under heading No. 84.34 of the said Import Trade Policy Schedule. The said Import Trade Policy Schedule is, in our opinion, for an entirely different purpose, namely, to carry out Government's policy on regulating import of goods into the country as announced from time to time. It cannot and does not serve as a guide for classifying goods under the Customs Tariff Schedule which is a self-contained code with headings, Chapter note's, Section notes and Rules of interpretation, all of which have legal force. Then there are also Explanatory notes to the Customs, Cooperation Council Nomenclature, on which the Customs Tariff Schedule is based, which though not of legal effect, are of considerable persuasive value in interpreting the scope of headings in the Customs Tariff Schedule. It is to these sides of interpretation that one must turn while determining the classification of imported goods for the purpose of levy of Customs duty. We, therefore, are not impressed by the appellants' contention that the classification of stereo flongs in the Import Trade Policy Schedule should be kept in view while determining their classification under the Customs Tariff Schedule. Now, as we have noted earlier, heading No. 84.34 of the Customs Tariff Schedule covers "Impressed flongs and matrices". A plain reading would show that it is not the raw material but the flongs and matrices

which are already impressed that are covered by the said heading. This view gains support from the Explanatory Notes in the CCCN (page 1284, volume 3) which excludes from the scope of heading 84.34 "Special paper board for making printing flongs (usually heading 48.01 or 48.07) ;...". The appellants' contention that the imported goods need not be already impressed but only should be designed for being impressed after importation is, in this view of the matter, not tenable. Since the goods have been imported in sheet form, they have been correctly classified under heading No. 48.01/21, of the Customs Tariff Schedule.

The appellants have not explained the basis on which they have contended that countervailing duty should have been levied only at the rate of Rs. 1.60 per kg. and not at 30% ad val. The item in the Central Excise Tariff Schedule which corresponds to heading No. 48.01/21 of the Customs Tariff Schedule is Item No. 17. The specific rate of duty which was in force till the 1976 budget, was changed to ad val. levy of 30% in that year's budget. We find that the Customs authorities have correctly levied countervailing duty at 30% ad val. equal to the excise duty leviable under Item No. 17 on paper and paper board, all sorts, other than uncoated and coated printing and writing paper. In the circumstances, we see no reason to interfere with the orders of the lower authorities as regards the claim of the appellants in the matter of refund of countervailing duty.

5. Having regard to the foregoing discussions, we do not see any merit in the appeal which is, therefore, rejected.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com