M.V. Enterprises Vs. Commissioner of Customs, Lucknow

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-08-2002

Reported in : (2002)(81)ECC393

Judge : K Usha, N T C.N.B.

Appellant : M.V. Enterprises

Respondent : Commissioner of Customs, Lucknow

Judgement :

1. The issue raised in both these appeals is whether the Gold Star brand sports shoes imported by the appellants were eligible to be assessed to Nil rate of additional Customs duty as applicable to goods classifiable under sub-heading 6401.12 of Chapter 64 of Central Excise Tariff. Chapter 64 relates to footwear, gaiters and the like and parts of such articles and heading 64.01 covers foot wear and parts thereof.

Sub-heading 6401.12 covers "Footwear of retail price not exceeding Rs. 125/- per pair". The appellants claimed assessment of the shoes in question to additional customs duty under heading 6401.12 at Nil rate of duty, upon a declaration that the retail sale price of the shoe was below Rs. 125/-per pair. The Customs authorities accepted the declaration and assessed the goods accordingly. However, subsequently, proceedings were initiated for recovery of duty under Sub-heading 6401.19 i.e. as "other" footwear. Allegation was also made that the short levy was on account of mis-declaration of retail price by the appellant importer. Evidence was also advanced to show that the footwear in question was actually sold in retail at sale prices exceeding Rs. 125/- per pair. The impugned order held that the shoes in question were not eligible for classification under 6401.12 at all. The order also upheld charges of mis-declaration. Consequently, duty demands have been confirmed, seized goods confiscated, penalties imposed and interest claimed on the amount of duty short-levied.

2. The appellants all along contested the charge of mis-declaration and submitted that they had made no mis-declaration regarding retail sale price inasmuch as their sale price of the imported shoes to the retail trade was much below Rs. 125/- per pair and the retailers who bought the shoes from them also sold the shoes at prices not exceeding Rs. 125/- per pair. During the hearing before us it has been stressed that the alleged sale of the same brand of shoes at higher (than Rs. 125/-) prices was not by the appellant or any of the retailers who bought the imported shoes from the appellant. It has also been submitted that Gold Star brand shoes are produced in India also and the mere fact of selling shoes of that brand at prices higher- than Rs. 125/- per pair was no reason to hold that the appellant's declaration was false. The learned Counsel for the appellant took us through the records of the case and explained that this was not a case of mis-declaration. He also submitted that even though the imported goods did not have a retail price declaration on the goods themselves or on the package thereof to the effect that retail price did not exceed Rs. 125/-, they were eligible to be classified under 6401.12, despite the stipulation regarding price declaration in Section 4A of the Central Excise Act. He submitted that the provisions in Section 4A of the Central Excise Act related only to levy of Central Excise duty on goods manufactured in India and not to the levy of additional Customs duty equivalent to Central Excise duty leviable under Section 3 of Tariff Act.

3. As against the above submissions on behalf of the appellant, learned SDR submitted that short-levy of duty in the present case was clear and was liable to be recovered under Section 28 of the Customs Act. He submitted that additional Custom duty (C.V. duty) was leviable on imported goods under Section 3 of the Tariff Act at the same rate at which Central Excise duty was leviable on goods manufactured in India.

Footwear manufactured in India was leviable to duty under Chapter 64 of the Central Excise Tariff. For this reason, additional duty of custom leviable on imported footwear was leviable at the same rate as applicable to footwear under Chapter 64. He submitted that note 2(e) to Chapter 64 of Central Excise Tariff stated that for the purpose of heading No. 6401, "the expression 'retail sale price' has the meaning assigned to it in Section 4A of Central Excise Act, 1944". He submitted that it is a specific requirement under Section 4A that footwear claiming assessment in terms of that Section should have its retail sale price declared on the goods or the packages thereof. The learned SDR pointed out that there is no dispute in the present case that the shoes under import did not contain any declaration regarding price on the shoes themselves or on the packages thereof. The learned SDR submitted that in the absence of such price declaration on the shoes or their packages, they were not to be considered for classification under sub-heading 6401.12. He pointed out that finding in this regard on pages 14 and 15 of the impugned order are entirely in conformity with the provisions of Chapter 64 of Central Excise Tariff and Section 4A of the Central Excise Act. The learned SDR submitted that recovery of the short-levied duty in these circumstances was not at all dependant on the appellant's declaration regarding retail sale price. The absence of declaration of retail sale price on the shoes or on the packages thereof disqualified these footwear from classification under sub-heading 6401.12 and they had to be classified as "other" footwear.

4. A perusal of the records of the case shows that the shoes under import did not contain price declaration on them or on their packages.

Note 2(e) to Chapter 64 makes it clear that only footwear conforming to the requirements of Section 4A of the Central Excise Act, 1944 would be eligible for classification under 6401.12. It is a stipulation under Section 4A that goods to be assessed with reference to retail sale price should have a declaration of the retail price thereof on the package. In the present case, since the shoes under import did not have such a declaration, they were not eligible to be considered for classification under Sub-heading 6401.12. Since the goods were incorrectly assessed at Nil rate of duty under heading 6401.12 at the time of import, short-levy had taken place and the same was liable to be recovered in terms of Section

28 of the Customs Act. The appellant's objection to such recovery has no legal basis. They are, however, right in their contention that the goods in question were not liable to confiscation and they were not liable to any penalty or payment of interest on account of the short-levy. The dispute involved in the present case is purely legal in nature. If the imported goods did not have price declaration they could not be classified under Subheading 6401.12. Their correct classification was under Sub-heading 6401.19 as "other" footwear. The original assessment at nil rate was incorrect and led to short-levy of duty. Therefore, the demand of duty made in the impugned order was valid. However, the appellant had made no mis-declaration with regard to price declaration on the packages.

Therefore, the confiscation of the goods, imposition of penalty and demand of interest are not legally sustainable.

5. In the light of the foregoing, the duty demands made in the impugned orders are confirmed. However, orders relating to confiscation, penalty and demand of interest are set aside. The appeals are disposed of in these terms.