

Super Cassettes Indus. Ltd. Vs. Commr. of Customs (Acc), New Delhi

Super Cassettes Indus. Ltd. Vs. Commr. of Customs (Acc), New Delhi

SooperKanoon Citation : sooperkanoon.com/27616

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-19-2002

Reported in : (2002)(80)ECC299

Judge : S Kang, a T V.K.

Appellant : Super Cassettes Indus. Ltd.

Respondent : Commr. of Customs (Acc), New Delhi

Judgement :

1. The issue involved in these eleven Appeals, filed by M/s. Super Cassettes Industries Ltd. is whether the NIL rate of additional Customs duty is available to the magnetic heads re-imported by them after repair being carried out abroad.
2. Shri V. Lakshmikumaran, learned Advocate, submitted that the Appellants are engaged in the recording of audio cassettes falling under Heading 85.24 of the Schedule to the Central Excise Tariff Act, that the recording is done on audio cassette records of which magnetic head is an essential ingredient; that they import magnetic heads which after regular use get worn out; that these worn out magnetic heads are sent abroad for re-lapping, as no such facility is available in India; that on their re-import, after repairs, the Appellants claimed the benefit of concessional rate of customs duty on the ground that the repair does not amount to manufacture and no Central Excise Duty is leviable on repaired goods in India; that the Revenue has charged Additional Customs duty on the repaired goods. The learned Counsel, further, submitted that additional duty of Customs equal to

excise duty is leviable under Section 3 of the Customs Tariff Act; that Explanation to Section 3 reads as under : "Explanation. - In this section, the expression "the excise duty for the time being leviable on a like article is produced or manufactured in India" means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India or, if a like article is not so produced or manufactured which would be leviable on the class or description of article to which the imported article belongs and where such duty is leviable at different rates, the highest duty." 3. The learned Advocate mentioned that a careful study of the said explanation will make it clear that the additional duty is leviable if Central Excise Duty is leviable on like articles manufactured or produced in India; that the Magnetic Head under the import are repaired Magnetic Heads and the same cannot be equated with new ones; that there is nothing on record to establish that Central Excise Duty is leviable on repaired goods and consequently Additional Customs duty is not leviable on repaired goods; that the issue to be decided is whether any Central Excise Duty would have been charged if the magnetic head was got repaired in India; that repair does not amount to manufacture and, therefore, no Central Excise duty is leviable on the repair of goods.

He relied upon the decision in the case of Hyderabad industries Ltd. v.U.O.L [1999 (108) E.L.T. 321 (S.C)] wherein the Court observed that as per Explanation, if an imported article is one which has been manufactured or produced then it must be presumed that such article can likewise be manufactured or produced in India. If the article cannot be subjected to excise levy because it is not produced or manufactured, then on the import of like articles no additional duty can be levied.

The Supreme Court also observed that as held in the Thermax Pvt. Ltd. v. Collector of Customs [1992 (61) E.L.T. 352 (S.C.)] "we have to forget that the goods are imported, imagine that the importer had manufactured the goods in India and determine the amount of excise duty that he would have been called upon to pay in that event." The learned Advocate further referred to Para 17 of the decision in Hyderabad Industries case wherein the Supreme Court held that "when articles which are not produced or manufactured cannot be subjected to levy of excise duty then on the imports of like articles no additional duty can be levied

under the Customs Tariff Act." He also relied upon the Tribunal's decision in the case of Continental Petroleum v. CC, Ahmedabad, Final Order Nos. 56-57/2000-C, dated 9-12-99 [2001 (137) E.L.T. 1437 (T)]. He finally submitted that Revenue has placed reliance on the decision in the case of Tnta Tea Ltd. v. Commissioner of Customs, Chennai [1999 (114) E.L.T. 775 (S.C.)]; that this decision is not applicable to the facts of the present matter as the issue involved in that matter did not relate to levy of Additional Customs duty; that decision in the case of Tony Electronics Ltd. v. CC, New Delhi [2000 (88) ECR 496 (T)] is also not applicable as the said decision was passed after placing reliance on the decision in Khandelwal Metal and Engineering Works v. U.O.L [1985 (20) E.L.T. 22 (S.C.)] which has been overruled in Hyderabad Industries case.

4. Countering the arguments, Shri M.P. Singh, learned DR, submitted that Section 20 of the Customs Act provides for levy of duty on the goods imported into India after exportation therefrom; that there is no difference between import and re-import of the goods; that both the times of importation and re-importation, the goods imported are magnetic heads and duty is leviable; that in Tata Tea case, it was held by the Supreme Court that "under Section 20 of the Customs Act, 1962 read with the definition of 'import' as given in Clause (23) of Section 2, imported goods would include re-imported goods as well and therefore the goods sent out of India and re-imported would also be liable to payment of duty in the same manner in which they would have been liable if imported for the first time in India." The learned DR also submitted that duty under Section 3 of the Customs Tariff Act is levied on the goods and not on manufacture and production; that for imposition of additional customs duty under Section 3 of the Customs Tariff Act, it is not to be examined whether the process amounts to manufacture as the Customs duty is charged on the product and not on the process. Reliance was also placed on the decision in the case of Durga Metal Works v. Union of India [2001 (131) E.L.T. 544 (Cal.)] wherein the Apex Court after observing that the Supreme Court in Hyderabad Industries case dealt with the asbestos fiber which was extracted from the rock and admittedly involved no process of manufacture, held that Additional Customs Duty was leviable on used aluminum cans.

5. In reply the learned Advocate mentioned that Central Excise duty is a levy on the activity of production or manufacture as was held by the Supreme Court in the case of Bombay Tyres International Ltd. [1983 (14) E.L.T. 1896].

6. We have considered the submissions of both the sides. The facts, which are not in dispute, are that magnetic heads are imported by the Appellants who after using the same, sends them abroad for re-lapping, that after re-lapping, the magnetic heads are re-imported, Section 20 of the Customs Act provides that "If goods are imported into India after exportation therefrom, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any to which goods of the like kind and value are liable or subject, on the importation thereof. The Supreme Court has also confirmed in the case of Tata Tea Ltd., supra, that imported goods would include re-imported goods as well and the goods sent out of India and re-imported would also be liable to payment of duty in the same manner in which they would have been liable if imported for the first time in India. It is thus evident that on re-importation of goods, it would be liable to payment of duty as if imported for the first time in India. Accordingly provisions of Section 3 of the Customs Tariff Act would also be attracted which provides that any article which is imported into India shall be liable to Additional Duty equal to the excise duty for the time being leviable on a like article if produced or manufactured in India. It is not the case of the Appellants that what is being re-imported by them is not a "magnetic head" which is produced or manufactured. For the purpose of levy of duty on goods, it is not material as to after what process an article is imported or re-imported into India. The test laid down by the Supreme Court in the case of Hyderabad Industries Ltd. is whether the imported article is one which has been manufactured or produced.

It cannot be claimed by the Appellants that magnetic head is not one such article which is not being manufactured or produced. In Hyderabad Industries case, the goods involved was asbestos fiber which was not manufactured or produced but was a natural material and accordingly no duty was held to be payable under Section 3 of the Customs Tariff Act.

In the present matter the product re-imported is magnetic head, which is a manufactured product. Accordingly we hold that the Additional Customs duty under Section 3 of the Customs Tariff Act is leviable on the magnetic heads re-imported into India. Accordingly all the appeals are rejected.

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