San International Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-16-2002

Reported in : (2003)(86)ECC370

Judge : S Kang, a T V.K.

Appellant : San International

Respondent : Cc

Judgement :

1. Applicants filed this application for waiver of pre-deposit of duty of Rs. 1,68,34,435.00 and of Rs. 92,179.54 and penalty of Rs. 50,000.00.

2. Brief facts of the case are that the applicants made import of goods and declared the same as 'artificial fur lining' classifiable under heading 43.04 of Customs Tariff. Show cause notices were issued to the appellants claiming classification of the goods under heading 59.07 of the Customs Tariff. The adjudicating authority dropped the proceedings and the revenue filed appeal before the Tribunal and the Tribunal, vide Final Order No. 62-63/01 dated 20.2.2001, remanded the matter to the adjudicating authority for de novo consideration with the direction that the jurisdictional Commissioner of Customs will provide an opportunity to both the sides to present their respective cases. In pursuance to the remand order, the present impugned order is passed classifying the goods, in question, under chapter 59 of the Customs Tariff and demand of duty is confirmed and personal penalty is imposed.

4. The contention of the applicants is that the Commissioner of Customs, while deciding the issue passed the order in violation to the principles of natural justice as the opportunity of cross-examining the experts, who gave opinion in respect of imported goods, was declined and no opportunity of personal hearing was granted. The contention of the applicants is that the samples of the goods, in question, were sent to The Silk & Art Silk Mills Research Association (SASMIRA), vide letter dated 24.7.96. The SASMIRA, vide letter dated 26.8.1996, opined that the goods, in question, can be classified as 'artificial fur'.

Thereafter, the Customs authorities again wrote to the SASMIRA on 23.10.96 asking for clarification and the SASMIRA vide letter dated 1.11.96, gave an opinion in favour of the revenue to the effect that samples do not appear to be 'fur skin' classifiable under chapter 43 of the Customs Tariff and is classifiable under chapter 59 of the Customs Tariff. The contention of the applicants is that another sample was sent to the Indian Institute of Technology (IIT) and the first opinion was given in favour of the applicants and. thereafter on clarification asked for by the customs authorities, the IIT, changed the opinion and opined in favour of the revenue. In such a situation, the submission of the applicants is that the cross-examination of the experts was necessary. Applicants also relied upon the decision of the Hon'ble Supreme Court in the case of CC v. M/s. Punjab Stainless Steel Industries, 2001 (77) ECC 6 (SC): JT 2001 (6) SC 146.

5. The contention of the applicants is also that the Commissioner of Customs, in the impugned order, wrongly held that the Tribunal, while remanding the matter, decided the issue of classification. Their submission is that the Tribunal, after relying upon the decision of the Hon'ble Bombay High Court in the case of Naresh Aggarwal v. UOI, 1993 (63) ELT 204, only remanded the matter to the jurisdictional Commissioner of Customs for de novo consideration and granted the opportunity to both the sides to present their respective case.

6. The contention of the revenue is that the samples were sent to SASMIRA and IIT. At the first instance, without taking into consideration the relevant Chapter notes, the opinion was given to the effect that the samples can be classified as 'artificial fur', but when the relevant chapter notes were brought to the notice of the

experts, the experts after considering the scope of clip notes, opined that the goods in question, are classifiable under chapter 59 of the Customs Act. The contention of the revenue is that a third sample was sent to Northern India Textile Research Association (NITRA) and they opined that the goods, in question, are classifiable under Chapter 59 of Customs Tariff.

7. Revenue relied upon the decision of theTribunal in the case of Hindustan Alloys Mfg. Co. Ltd. v. CC, 1998 (99) ELT 559 (T) to submit that denial of opportunity to cross-examine the experts does not violate the principles of natural justice.

8. In this case, the issue is in respect of classification of the goods, in question. The revenue sent the samples to SASMIRA and IIT and the first opinion was given in favour of the applicants and, thereafter, on clarification sought by the Customs authorities, the experts opined that the goods, in question, are classifiable under Chapter 59 of the Customs Tariff as claimed by the revenue. The applicants asked for cross-examination of the experts, which was declined by the adjudicating authority only on the ground that the Tribunal while remanding the matter, decided the issue of classification. The adjudicating authority reproduced para 14 of the order passed by the Tribunal. We find that para 14, which was taken to be the decision by the Tribunal, was in fact, the observation of Hon'ble Bombay High Court in the case of Naresh Aggarwal (supra) and theTribunal remanded the matter to the adjudicating authority after taking into consideration the observations made by the Hon'ble High Court and directed the adjudicating authority to decide the issue de novo in the light of the observations made in the order and also with the direction to provide an opportunity to both the sides to present their respective cases. The SASMIRA & IIT, in the first opinion, opined in favour of the applicants and thereafter, on clarification, the opinion was given in favour of the Customs authorities. In such a situation, the cross-examination of the experts becomes necessary.

Therefore, prima facie, rejecting the permission to cross-examine the experts, whose opinion was relied upon by the adjudicating authority, is violation of the principles of natural justice. The revenue relied upon the decision of the Tribunal, in which the Tribunal held that when the chemical examiner gave composition of

the goods and the importer is not objecting the composition given by the chemical examiner, in such a situation, the adjudicating authority is to decide the classification of the goods after taking into consideration the composition of the goods and there is no need to cross-examine the chemical examiner. The facts of the present case are different. In the present case at the first instance, the expert opinion was in favour of the applicants and, thereafter, on clarification, the opinion was given in favour of the Customs authorities. In these circumstances, we find balance of convenience in favour of the applicants, therefore, the application for waiver of pre-deposit of duty and penalty is allowed unconditionally and recovery of the same is stayed during the pendency of the appeal.

Registry is directed to list the appeal for regular hearing on 27.8.2002.