

Para Engineering Works Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-14-1986

Reported in : (1987)(27)ELT668TriDel

Appellant : Para Engineering Works

Respondent : Collector of Customs

Judgement :

1. The appellants filed Revision Application before the Central Government against the order-in-appeal No. 207 to 211/80 dated 4-3-1980 passed by the Appellate Collector of Customs, New Delhi. By the said order-in-appeal the Appellate Collector disposed of five appeals filed by the appellants against give order-in-original bearing No. 115 to 119/77 dated 27-4-1977 passed by the Assistant Collector of Customs (Refund), New Delhi. The Revision Application was subsequently transferred to this Tribunal for disposal as appeal.

2 As per practice followed in this Tribunal four supplementary appeals were later on filed, which have been listed for hearing alongwith main Revision Application before us today.

3 We have heard Shri A.C. Jain, learned Advocate for the appellants and Shri J. Gopinath, learned S.D.R. for the respondent.

4. The appellants imported five consignments containing parts of Industrial Sewing Machine, vide Bills of Entry Nos. 5683 dated 22-4-1976, 6718 dated 22-5-1976,

6997 dated 3-6-1976, 6998 and 6999 dated 3-6-1976. In the supporting invoice the goods were described as Industrial Sewing Machine parts; (TA-1 type) which were worked by 1/4 H.P. The goods were assessed by the Custom House under Item 72(11) I.C.T. The appellants cleared the goods on payment of customs duty as assessed, but later on they submitted five refund claims on the ground that the goods were assessable under Tariff Item 72(3) I.C.T. as the Sewing Machine of which the imported goods were the parts, were worked by 1/4 H.P. Shri Jain has clarified during the hearing that the Tariff Heading 72(11) I.C.T. was put by them in the Bills of Entry as per direction of Assessing Officer. He has stated that the assessment of similar goods was under dispute in the past and the matter went in appeal before the Appellate Collector and while disposing of that appeal it was decided by him that goods were correctly assessable under Item 72(3) I.C.T. Therefore, Shri Jain has urged, the appellants have all along stated that similar goods were correctly assessable under Tariff Item 72(3). All the five refund claims were rejected by the Assistant Collector of Customs on the ground that the importer's claim that the Appellate Collector's order passed in the case of particular importation should be made applicable to all other similar importation is not acceptable and that the order-in-appeal would govern a particular importation for which the order was passed and cannot be made generally applicable. The Assistant Collector further held that the goods were out of customs control. Importer's contention that the same were usable in machines operated with 1/4 H.P. could not be verified at that stage. Appeal filed by the appellants before the Appellate Collector of Customs were also rejected on similar grounds.

Hence, the present revision application, which is now before us for disposal as appeal.

5. We have considered the case record placed before us and the arguments of Shri Jain and Shri Gopinath. At the relevant time Item 72(11) read as follows :- "72(11) Sewing Machines to be worked by manual labour or which require for their operation less than one quarter brake horsepower, and parts of such sewing machines :- (b) other parts, including the hand attachment if imported separately." Tariff Item 72(3) of I.C.T. is also quoted below for proper appreciation of the dispute :- "Component parts of machinery as defined in Item Nos. 72, 72(1) and

72(2) and not otherwise specified, namely such parts only as are essential for the working of the machine or apparatus and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose but excluding small tools like twist drills and reamers, dies and tape, gear, cutters and hacksawblades; Provided that articles which do not satisfy this condition shall also be deemed to be component parts of the machine to which they belong if they are essential to its operation and are imported with it in such quantities as may appear to the Collector of Customs to be reasonable." 6 In reply to query Shri Jain has clarified that the Industrial Sewing Machine of which the imported goods are the parts, fall under Tariff Item 72(b) I.C.T. On a query from the Bench Shri Gopinath has also confirmed the same. The question now arises as to whether sewing machine for which parts have been imported are Industrial Sewing Machine workable on a motor of 1/4 H.P. or those are workable on motor below 1/4 H.P. or whether the same can be operated manually also. Each Bill of Entry contains reference to the relevant invoice. Shri Gopinath, after going through the file, has confirmed that the invoices are properly correlated with the Bills of Entry covered by the present appeals. All the invoices submitted before us show that the parts related to Industrial Sewing Machine TA-1 Type which were worked by 1/4 H.P. Invoices were available before the Assessing Officer at the time of assessment of the goods. It was, therefore, incumbent on him to find out as to whether description in the invoice was correct or not. We find that the assessing officer did not challenge the description as per invoice, but on the other hand assessed the goods under Tariff Item 72(11) I.C.T. which is meant for sewing machine operated on motor less than 1/4 H.P. Viewed from the description of the goods in the invoice, the assessment under this tariff item was obviously incorrect.

7. In view of the above facts, the rejection of the refund claims by the Assistant Collector and then by the Appellate Collector of Customs on the ground that the goods were out of customs control is not found by us to be justified. As a result, the appeals should succeed and the orders-in-appeal would deserve to be set aside. Accordingly, we set aside all the five orders-in-appeal passed by the Appellate Collector and allow these appeals with consequential relief to the appellants.