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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Mar-11-2003

Reported in : (2002)LC20Tri(Chennai)

Judge : S Peeran, G B Deva, R K Jeet

Appellant : Digital Systems

Respondent : Commissioner of Customs

Judgement :

1. This appeal is directed against the Qrder-in-Original No.(115/98-CAU)/(S/58/134/98-GR-VI), dated 2-4-98/1-7-98 passed by the Commissioner of Customs, Madras, whereby he has ordered confiscation of the goods viz. lighting equipment imported by the appellants and allowed the same to be redeemed on payment of fine of Rs. 7,00,000/- under Section lll(d) of the Customs Act, 1962, besides imposing penalty of Rs. 1,00,000/- on the appellants under Section 112 of the Customs Act.

2. The brief facts of the case are that the appellants M/s. Digital Systems, Bangalore have imported lighting equipment for cinematographic studio valued at Rs. 10,46,716/- and filed Bill of Entry No. 16521, dated 27-3-98 and sought clearance of the same under CTH 9010 90 while the department has held that the item in question falls under CTH 940540 00 which covers lamps and light fittings, where import is restricted and ordered confiscation of the same with option to redeem the same on payment of fine of Rs. 7,00,000/- holding that the importers

have failed to produce specific licence for importing the offending goods.

3. The appellants assail the impugned order on the ground that the goods imported have been correctly classified by them under CTH 9010900 and the goods fall under the OGL category and are not electric lamps and light fittings falling under CTH 94054000. The goods are equipments which are more in the nature of accessories to audio and video equipments.

4. Shri G. Seetharaman, learned Consultant appearing for the appellants submitted that the appellants have imported the goods on the bona fide belief that they are not consumer goods whereas in terms of CTH 94.05.40 consumer goods are not permitted to be imported except against a licence or in accordance with the public notice issued in that behalf. Admittedly the goods in the present case is not consumer goods.

The goods in question are used in stage performance of theatrical value and comprise of various components having distinctive use and function and when assembled to have full utilization in the stage, they bring out a product having a distinctive name, viz. light and sound system exclusive for use in cine/video industries. The components also constitute different distinctive use. The inbuilt micro phone in the light absorbs sound and activates the light to the rhythm. These aspects amply bring out the distinctive feature as compared to those ordinary electric lamp and light fitting classifiable under Chapter 94.05.40. argued the learned Consultant. The learned Consultant also relied upon the following decisions : (1) 1998 (102) E.L.T. 410 - in the case of Transfreight Containers Ltd. v. CC, Mumbai in which it was held that though Ch 63.12.00 goods were restricted item, yet so long as they are not consumer goods, such restriction will not apply and the redemption imposed was set aside.CC, New Delhi v. Timetech Enterprises Pvt. Ltd. reported in 1999 (105) E.L.T. 340 in which it was held that confiscation of the goods as a result of difference of opinion about classification between importer and the department - penalty not imposable under Section 112 of the Customs Act, 1962.Standard Chartered Bank v. CC, Mumbai reported in 1999 (107) E.L.T. 446 in which it was held that when the equipment was not meant for use by individual consumer, import under OGL was permissible.

5. The learned Consultant further submitted that in this case, the imported goods are not intended to be used as ordinary house hold consumer electric or electronic goods and the goods are intended exclusively for use by cine/video stage categories of industries. He further submitted that the appellants were under the bona fide belief that the goods did not require any import licence and there was no mens rea on their part. He submitted that having regard to the complex nature of the goods imported as against ordinary spot lights and therefore, the goods correctly fall under sub-heading 901090. He, therefore, prayed for setting aside the impugned order and allowing the appeal.

6. Shri A. Jayachandran, learned DR defended the impugned order and submitted that the item imported is more specific to the heading adopted by the department and the importer was required to have produced valid licence for importation and in the absence of the same, the goods have been rightly confiscated. He sought for dismissal of the appeal.

7. We have considered the submissions made before us and gone through the case records including the catalogue and the additional written submissions made by the appellants. In this case the appellants have imported the goods viz. Lighting Equipment for Cinematographic Studio.

According to the appellants the goods fall under CTH 901090 while the department classified the goods under CTH 94054000. In order to have a better ap- preciation of the facts, we reproduce below the relevant entries in the tariff : Apparatus and equipment for photographic (including cinematographic) laboratories (including apparatus for the projection or drawing of circuit patterns on sensitised semi-conductor materials), not specified or included elsewhere in this Chapter; negato-scopes; projection screens - Apparatus and equipment for automatically developing photographic (including cine-matographic) film or paper in rolls or (or automatically exposing developed film to rolls of photographic paper Lamps and lighting fittings including search lights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or in-cluded As could be seen from the above entries, sub-heading 901090 covers parts and accessories of Apparatus and equipment for Photographic (including cinematographic) laboratories. Heading 94.05 covers Lamps and lighting fitting including search lights and spotlights and parts thereof and sub-heading 9405.40 covers other electric lamps and lighting fittings. The goods imported are Lighting Equipment for Cinematographic Studio and not Parts and accessories of apparatus and equipment for Photographic laboratories. Therefore, the classification of the item as claimed by the appellants is ruled out. Now coming to the description of the item under Heading 94.05, it is seen that this heading covers lamps & lighting fittings including searchlights and spotlights and parts thereof and sub-heading 9405.40 covers other electric lamps and lighting fittings. On a careful reading of both the entries, as noted above, we observe that though there is no specific heading under chapter 94 either to cover the goods imported, the heading which is more specific is the one adopted by department because what is imported is lighting equipment which is a focus light/spotlight which produces a parallel and extremely concentrated beam and allows long distance projections without losing intensity or flaring out. It is also particularly suitable as fully programmable and remote control follow-spot in the professional use. Further, the Managing Director of the appellants admitted before the original authority that the appellants were under the wrong impression that such lighting equipments can be imported without any licence and expressed their inability to get a licence and prayed for leniency. Therefore, the requirement of licence for the importation of the goods has been admitted by the appellants before the original authority. In the additional written submissions made before us also the appellants agree that the goods are spot lights but not ordinary spot lights or light fittings. In view of the above, we are of the considered opinion that the goods have been rightly confiscated and we uphold the same.

Appellants have cited the decision in the case of Transfreight Containers Ltd. v. CC, Mumbai reported in 1998 (102) E.L.T. 410 which dealt with whether tarpaulines are consumer goods or not. They have also relied upon the decision in the case of Standard Chartered Bank v.CC, Mumbai reported in 1999 (107) E.L.T. 446 wherein recording system - 32 channel dual deck voice logging system was imported and it was held that the equipment is more in the nature of professional equipment and not meant for use by individual consumer. The facts and circumstances of these two decisions are not similar to the facts in the present case and hence they are not applicable to the present appeal. However, in the facts and circumstances of the case, we are inclined to think that interests of justice would be served if the redemption fine is reduced to Rs. 2.5 lakhs (Rupees Two lakhs and Fifty thousand) and we order accordingly.

8. As regards imposition of penalty is concerned, no mens rea has been established in this case and the appellants were under the bona fide belief that the goods fall under CTH 901090 and are importable without a licence . They have also relied upon the decision of the Tribunal in the case of CC, New Delhi v. Time Tech Enterprises Pvt. Ltd. where it was held that confiscation of goods as a result of difference about classification between importer and the department - penalty was not imposable. We are of the considered opinion that this decision is applicable to the facts of the present case and in that view of the matter, we set aside the penalty on the appellants. In the result, except for the reduction in the quantum of redemption fine and setting aside the penalty, the appeal is otherwise rejected.

9. I have carefully considered the order prepared by my learned brother but I am unable to agree with the same. Hence, I am recording my separate order.

10. The question before the authority was as to whether the imported item is required to be classified under Customs Tariff Heading 9010.90 which covers only "parts and accessories" of apparatus and equipment for photographic (including cinematographic) laboratories. The heading specifically excludes "photographic (including cinematographic) studio equipment such as lighting apparatus, reflectors, spot lights, electric lighting lamps and tubes of all kinds", as these items fall in their respective heading, therefore the importer had claimed the items to be falling under Customs Tariff Heading 9010.90 whereas ld. Commissioner classified the imported items under CTH 9405.40 and held it as a restricted item whose import is not permitted except against a specific licence. As per ITC (HS) classification of imported items under Heading 9405.10, the item is considered as consumer goods not permitted to be imported except against a licence or in accordance with public notice issued in this behalf.

11. It is the contention of the appellant-importer that the item does not come within the ambit of "consumer goods" and the definition as appearing in para 3.12 of Import Export Policy of Procedure 1997-2002 means any consumer goods which can directly satisfy the human needs without further processing and include consumer durable and accessories thereof. It is the submission of the appellant that the item in question being subject goods for the purpose of cinematographic studio, it does not fall within the ambit of consumer goods. They contended that there is no offence committed and hence they are not liable to be confiscated for the purpose of fine and penalty. They relied on the catalogue which, on examination, disclosed that the items are specifically manufactured for cinematographic studio as parts of accessories of apparatus and equipment for cinematographic laboratories and they are not complete cinetomatographic photo equipment for the purpose of classification under Heading 9405.40 as held by the authorities below. Therefore in terms of the catalogue produced, it is very clear that the item is not classifiable under 9405.40 as other electric lamps and light fittings, as classified by the department and to be treated as consumer goods for the purpose of licensing under the ITC (HS) classification. On examination of the literature, it is very clear that the item is not an ordinary lamp and lighting fitting for classification under chapter heading 94.05. The HSN notes also supports the appellant's plea that they are equipments for cinematographic studio and it has to be classified only under specific chapter heading 90 which permits import of item without licence as it is not consumer item. Therefore, I agree with the appellants for classification of the item under chapter heading 90.10.90 as against the chapter heading 9405.40 as held by the revenue.

12. I, therefore, order for setting aside the impugned order and allow the appeal with consequential relief, if any.

In view of the difference of opinion in the matter, the following question is referred to Third Member :- "Whether the appeal of the importer is required to be partially allowed by reducing the redemption fine & setting aside the penalty amount in the case as held by Member (T); The appeal is required to be allowed with consequential relief, by upholding the appellant's plea as held by Member (J)".(Jeet Ram Kait) (S. L. Peeran)Member (T) Member (J)Dated : 20-9-2002

Dated : 20-9-2002 13. Since there has been a difference of opinion between the two Members of the Bench, the following question has been referred to me to express my view as Third Member.

"Whether the appeal of the importer is required to be partially allowed by reducing the redemption fine and setting aside the penalty amount in the case as held by Member (T); The appeal is required to be allowed with consequential relief by upholding the appellants' plea as held by Member (J)".

15. It was submitted by both sides that the dispute is in respect of classification of search light and spot light. Whether the items imported (search light and spot light) are classifiable under Customs Tariff Heading 901090 as claimed by the party or under CTH 94054000 as per the department is an issue to be considered herein.

16. The Commissioner classified the imported item under Customs Tariff Heading 9405.40 and also held that it is a restricted item whose import is not permitted except against specific licence.

17. Ld. SDR, Smt. Bhagya Devi submits that the items are more appropriately classifiable under Chapter Heading 9405,400, She states that chapter heading 9010 covers only parts and accessories of apparatus and equipment for Photographic (including cinematographic) laboratories. Nevertheless the heading specifically excludes photographic included cinematographic such as light apparatus, spot lights, Electric lighting lamps and tubes of all kinds. In this context, she has specifically drew my attention to the chapter Note (i)(j) Chapter Heading 90 wherein it has been specifically excluded search and spot lights falling under Heading 94.05.

18. Since Shri G. Seetharaman, Ld. Consultant appearing for the as-sessee tried to convince me submitted that the item in question cannot be considered as search light or spot light as envisaged under Chapter heading 940540 but in vain.

19. I have gone through the explanations offered by both sides with reference to the tariff entry. I find that the items are appropriately classifiable under heading 9405.40 as it was contended by the Revenue.

Based upon the classification of the products in question by Member (Technical) has reduced the redemption fine and set aside the penalty while Member (Judicial) has held that the appeal deserves to be allowed with consequential relief. In the facts and circumstances of the appeal and in view of the fact that the item is more appropriately classifiable under Chapter heading 94. I find that the reason given by the Member (T) is more appropriate in reducing the redemption fine accordingly. The view expressed by Member (Technical) is concurred with. Registry is directed to place the file before the Original Bench to pass order accordingly.

In terms of the majority order the appeal of the importer is required to be partially allowed by reducing the redemption fine and setting aside the penalty amount.(Jeet Ram Kait) (S.L. Peeran)Member (T) Member (J)Dated : 11-3-2003 Dated : 11-3-2003