

Electronic Devices Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-31-1986

Reported in : (1987)(12)ECC50

Appellant : Electronic Devices

Respondent : Collector of Customs

Judgement :

1. M/s. Electronics Devices, Andrews Building, 2-F, Mahatma Gandhi Road, Bangalore had filed a revision application to the Additional Secretary, Revision Application, Government of India, Ministry of Finance, Department of Revenue, New Delhi being aggrieved from Order-in-Appeal No. C3/2165/81 dated 14-9-81 passed by the Appellate Collector of Customs, Madras. After coming into existence of the Tribunal the said Revision Application stands transferred to the Tribunal in terms of the provisions of Section 101B of the Customs Act, 1962 to be disposed of as an appeal.

2. Briefly the facts of the case are that M/s. Electronics Devices, Bangalore had imported duplicating machine valued at Rs.86,376.81 from Japan and sought assessment under heading 84.59(2) and 68, CET. The appellant had contended before the Assistant Collector that the Soni Cassette Duplicating Machines imported by them had not sound recording or reproduction and hence they were not covered by heading 92.01/13 of CTA but the imported goods were appropriately classifiable under heading 84.59 of the Customs Tariff Act as the machinery for production of a commodity as the cassettes obtained from these machines are commodities which are sold to ordinary public. It was further contended that the machinery imported had special features. They argued that the machinery imported operates at a very high speed which is eight times the speed of a normal tape recorder and the imported tape recorder was incapable of recording or reproducing sound. The appellants also contended that the machine imported can never be considered as cassette recorders covered by item 37 AA of the Central Excise Tariff and as such Counter vailing duty under Tariff Item 68 was not leviable. The learned Assistant Collector had observed that the sound waves which are recorded on master cassette are reproduced in another tape by the cassette to cassette printer. He had held that the principal of recording was exactly the same as in sound recorder covered by 92.11 CCCN. He had held that the impugned item fall under heading 92.01/13 of the Customs Tariff and will attract levy of countervailing duty under tariff item 37 AA of the Central Excise Tariff. Being aggrieved from the aforesaid order the appellants have filed an appeal to the Appellate Collector of Customs. The appellant's contentions were which were before the Assistant Collector. Before the Appellate Collector the appellant had again disputed the assessment of "Sony Cassette Duplicating Machines" under Heading 92.01/13 as Sound Recorders and Reproducers. The appellants had argued that the goods imported were cassette to cassette duplicators and they can print only electromagnetic waves in electromagnetic tapes and that they cannot reproduce sound and there is no device for it. These tapes can only be put in another tape recorder in order that it may be played and there, there is no amplifier for reproducing the sound; they were only meant for printing the electromagnetic waves and had claimed assessment under heading 84.59(2). It was also argued that the countervailing duty under heading 37AA was not leviable. The learned Appellate Collector took the view that the "Soni Cassette Duplicating Machine" cannot be regarded as a Sound Recording or Sound Reproducing instrument and the

assessment under heading 92.01/13 was not correct. She had held that the more appropriate heading was 85.18(27)(1) read with Notification No.172-Cus-77 as the machine was found to be an electrical appliance having an individual function and Notification No. 172-Cus/77 was applicable and it was not included in the list of items attracting the statutory rate of duty and as such the machinery will attract the concessional rate of 60% + Auxiliary duty 20%. On the issue of Countervailing duty the learned Appellate Collector of Customs had accepted the contentions of the appellant that the duplicating machine did not record sound and as such cannot be held to be a taperecorder and as such assessment under Item 68 of the Central Excise Tariff was attracted. She had allowed the appeal in this regard. Being aggrieved from the aforesaid order the appellant had come in appeal before the Tribunal.

3. Shri N. C. Sogani, the learned Consultant has appeared on behalf of the appellants. Shri Sogani has reiterated the contentions made in the revision application. He has referred to the Bill of Entry and has pleaded that the appellants had imported 'Soni Cassette Duplicating Machine' and that the correct classification is under heading 84.59(2) of the Central Excise Tariff. Shri Sogani has argued that the machine does not produce or record sound but just copies the magnetic impulses.

Magnetic impulses are copies from one machine to another. The machine does not possess speaker and heading 92.01/13 is not relevant at all.

He has argued that the from the master cassette to the other cassettes the recording is done just in four minutes. He has also referred to note (5) of Section 16 of the Customs Tariff Act. He has pleaded for the acceptance of the appeal.

4. Shri J. Gopinath, the learned Senior departmental Representative who has appeared on behalf of the respondent states that there is no dispute on facts. Shri Gopinath, the learned Departmental Representative states that the revenue authorities have not issued any Review Show Cause Notice and the benefit which has already been granted by the Appellate Collector of Customs cannot be taken away. He has pleaded that the Assistant Collector had classified the goods under heading 92.01/13 whereas the Appellate Collector of Customs had assessed the same under heading 85.18(27)(1). He has pleaded that the classification done by the Assistant Collector under heading 92.01/13 was correct. Shri Gopinath has argued that the Bench should exercise its inherent powers and order the correct classification of the imported item. Shri Gopinath, the learned Senior Departmental Representative has referred to Rule 3A of the Interpretative Rules in respect of the 1st Schedule of the Import Tariff of the Customs Tariff.

Shri Gopinath states that the heading which provides the most specific description shall be the appropriate heading. He argued that the heading adopted by the Appellate Collector of Customs is more generic and as such the item imported by the appellant does not fall under that heading. Shri Gopinath states that the Tribunal should give its finding as to the correct classification and argues that the imported goods fall under heading 92.01/13. He states that he has got no objection if the Tribunal gives a finding in this regard and also submits that the benefit given by the Appellate Collector of Customs may not be withdrawn as there is no Review Show Cause Notice in this regard and there was no right of filing of cross objection at that time and the Tribunal has already in a number of decisions held that in case of revision applications transferred from the Central Government to the Tribunal, the respondent does not acquire the right of filing of cross objection. Shri J. Gopinath, the learned Senior Departmental Representative states that heading 92.01/13 at the relevant time stood as under :- "92.01/13 - Musical instruments including electronic and similar musical instruments; sound recorders and reproducers; decoy calls and sound-signalling instruments; television image and sound recorders and reproducers; parts and accessories of the above articles." "Musical instruments; instruments and appliances for recording or reproducing sound or both; television image and sound recorders or reproducers; decoy calls and mouth-blown sound-signalling instruments; parts and accessories of the above articles; prepared media for sound or similar recording; sound recorded or similar media." Shri J. Gopinath, the learned Departmental Representative states that the word 'and' up to February, 1984 meant as 'or'. In support of his arguments he has referred to the definitions of 'and' and 'or' as given in Blake's Law Dictionary

:- AND: A conjunction connecting words or phrases expressing the idea that the latter is to be added to or taken along with the first.

Added to; together with; joined with; as well as; including.

Sometimes construed as 'or'.

It expresses a general relation or connection, a participation or accompaniment in sequence, having no inherent meaning standing alone but deriving force from what comes before and after. In its conjunctive sense the word is used to conjoin words, clauses, or sentences, expressing the relation of addition or connection, and signifying that something is to follow in addition to that which proceeds and its use implies that the connected elements must be grammatically co-ordinate, as where the elements preceding and succeeding the use of the words refer to the same subject matter.

While it is said that there is no exact synonym of the word in English, it has been defined to mean "along with", "also", "and also", "as well as", "besides", "together with".

When expression "and/or" is used, that word may be taken as will best effect the purpose of the parties as gathered from the contract taken as a whole, or, in other words, as will best accord with the equity of the situation.

OR: A disjunctive particle used to express an alternative or to give a choice of one among two or more things. It is also used to clarify what has already been said and in such cases, means "in other words", "to-wit" or "that is to say". The word "or" is to be used as a function word to indicate an alternative between different or unlike things. In some usages, the word "or" creates a multiple rather than an alternative obligation; where necessary in interpreting an instrument, "or" may be construed to mean "and".

Shri Gopinath states that in the present matter 'and' should be interpreted as 'or'. In support of his arguments he has referred to two judgements of the Tribunal in the case of Copper Rollers Pvt. Ltd., Bombay v. Collector of Central Excise, Bombay and United Electrical Industries Ltd., Quilon v. Collector of Customs, Bombay reported in 1983 ELT 981 and 991 respectively wherein the Tribunal had held that " 'Or' - Meaning of. - According to Shroud's Judicial Dictionary, 4th Edition, 'or' is prima facie an alternative word, however not always disjunctive and that it is sometimes interpretative, or expository, of the former word. Similarly, the book "Words and Phrases Legally Defined", Volume 4, states inter alia on the basis of Australian authorities that 'or' is sometimes read as "that is to say, and if the general scheme of an Act of Parliament obviously calls for 'and' to be read as 'or' as 'and', the court is free to take the very important step of altering the verbiage of that Act. From the well known dictum of the Supreme Court that grammar is a good guide to meaning but is a bad master to dictate, it will appear that there is no hard and fast rule as to the meaning of the word 'or' and this word gets its proper meaning from the particulars context from which it has been used. Shri Gopinath stated that though there is no reproduction of sound function of recording is very much there and the mere fact that there is no reproduction of the sound cannot take it away from heading 92.01/13 and the appellant had imported the same as a recorder and in support of the same he has referred to appellant's arguments before the Appellate Collector of Customs where the appellant had contended that it is merely a recorder and not a reproducer. In support of his arguments Shri Gopinath has also referred to two judgements of the Tribunal in the case of Raja Radio Co., Bombay v. Collector of Customs, Bombay [Order No. 101/85-B-2 in Appeal No. CD(SB)(T) A.No. 55/79-B-2] wherein the Tribunal had held that "Soni Cassette Printers" were leviable to Countervailing duty under Tariff Item 68 of the Central Excise Tariff and not under 37AA, CET. There the importer had accepted the classification under heading 92.01/13. The second judgement to which the learned Senior Departmental Representative referred was in the case of Hindustan Aeronautics Ltd. (Order No. 202/85-B-2) dated 1-11-1985 where the importer had imported a special type of recorder and reproducer and the Tribunal had held that the same was classifiable under heading 92.01/13 of the Customs Tariff Act. Lastly Shri Gopinath has argued that by no stretch of imagination the appellant's claim under 84.59(2) of the Customs Tariff Act can be adopted since the imported item is for the purpose of recording and

not for the purpose of manufacture of any commodity. He has pleaded for the dismissal of the appeal.

5. Shri N.C. Sogani in reply refers to page 2 of the Appellate Collector of Customs Order. He has referred to the appellant's contentions raised before, the Appellate Collector of Customs in top para where in the appellant had agitated that these instruments can print only electromagnetic waves on electromagnetic tapes and they cannot reproduce sound and there is no device, for it. He argued that in the goods imported there is no reproduction of sound. Shri Sogani further states that the distinction brought out by Shri Gopinath between 'And' and 'Or' is not relevant. Shri Sogani argued that in the case of M/s. Raja Radios the importer had not disputed the basic classification and it does not affect him in any way and in the case of Hindustan Aeronautics Ltd, there was a complete system of recording and reproduction and as such: that judgement does not affect the appellant. He has also argued that 'Soni Cassette Duplicating Machine' produces cassettes viz. recorded cassettes and it correctly falls under heading 84.59(2) of the CTA. He has pleaded for the acceptance of the appeal.

6. We have heard both the sides and have gone through the facts and circumstances of the case. In the matter before us the appellant had imported 'Soni Cassette Duplicating Machine'. The function of the machine is to transfer the recording from master cassette to the slave cassette. The learned consultant had laid great emphasis that recording of cassettes was in fact recording of magnetic waves in electro magnetic tapes. We may observe that sound recording is always in the nature of electro-magnetic waves. The mere fact that there is no reproduction of sound and the speakers are not attached to the Soni Cassette Duplicating Machine cannot take away the basic function of the machine viz. recording of sound. A simple perusal of heading 92.01/13 as it stood at that time (reproduced on page 5 of this order) clearly indicates that sound recorders and reproducers fall under Heading 92.01/13. Here the word 'And' means 'Or'. Our views are fortified by the earlier judgement of the Tribunal cited by the learned Senior Departmental Representative. In view of the above discussion we hold that the 'Soni Cassette Duplicating Machine' falls under heading 92.01/13. Interpretative Rule 3A of the Customs Tariff clearly lays down that the heading which provides the most specific description shall be preferred. The Revenue had not issued any Review-Show Cause Notice. The Appellate Collector of Customs had assessed the same under Heading 85.18/27(1) which carried the rate of duty at the rate of 60% at the relevant time whereas under heading 92.01/13 the rate of duty is 100%. Since no review proceedings were started by the Revenue we further direct that the Revenue will not withdraw the benefit already granted by the Appellate Collector of Customs. We further hold that the classification given by the Appellate Collector of Customs under heading 85.18/27(1) was not correct in Law and the imported goods do not fall under heading 84.59(2) of CTA as claimed by the appellants.

With these observations the appeal is rejected.

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