Commissioner of Customs Vs. Charisma Cosmetics Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-29-2003

Judge : A Wadhwa, S T S.S.

Appellant : Commissioner of Customs

Respondent : Charisma Cosmetics Pvt. Ltd.

Judgement :

1. Revenue has come in this appeal. The short issue to be decided is whether stoppers, lids and caps for Nail polish and Lipstick containers would be requiring an import licence or are freely importable without a licence, by an actual user which the importers are in this case.

2. The lower authority has held that the subject goods imported goods were permitted for imports without a licence following the decision in the case of T.C. Healthcare. On the question from the Bench, the learned Advocate for the Respondent submitted that decision was final as the same has not been appealed against by Revenue.

3. The learned D.R. on the other hand contends that after the introduction of ITC (HC) Classification Policy, the order in the case of M/s. T.C. Health Care would not be applicable. There was a specific mention in this policy against tariff heading No. 39235000.10 which reads as follows:- He further submitted that their import as held by Commissioner, would not be freely made. The goods should be held to be liable for confiscation provision of Section 111(d) of the Custom Act, 1962.

4. The learned Advocate took us through the forward of the ITC (HC) Policy, issued on 25/03/1996 to claim that there was no effective change in the policy by the introduction of this ITC (HC) Classification Policy. He drew our attention to public notice No.32-ITC(PN)92-97 dtd. 17^th July, 1992 specially Para 4 thereof which reads as under:- "It is hereby notified that accessories, components, parts and spares of consumer durables, except those which are specifically included in the Negative List of Imports, may be imported by a manufacturer of the consumer durables without a licence. Such imports shall be subject to the Actual User condition and not transfer of the imported goods shall be made without the permission of the Chief Controller of Imports & Exports. Importers will be required to produce evidence of their being engaged in the manufacture of the consumer durables concerned at the time of the Customs clearance (e.g. Industrial licence issued by S.I.A., Acknowledgement received on filing of Memorandum with S.I.A., Registration as an Actual User with the concerned authority i.e.

State Director of Industries etc.)" and submitted that the appellants in this case being actual user manufacturer of the Nail Polish, would be permitted to import subject goods, without producing of any licence. He also submitted that this Public Notice valid at the relevant time since it was not overruled.

5. Once we read the policy of the ITC (HC), with the Public Notice, relied upon by the learned Advocate for the importers it is found that the same would permit the import of the subject goods without a specific licence. In this view of the matter, we do not find any merit in the Revenues appeal. The same is required to be dismissed.

6. In view of our finding, we order the dismissal of the Revenues appeal.