

Radiant Cables Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-23-2003

Judge : S Kang

Appellant : Radiant Cables

Respondent : Commissioner of Customs

Judgement :

1. The appellant filed this appeal against the order-in-appeal passed by the Commissioner (Appeals).

2. The brief facts of the case are that the appellant made import of Phthalate Plasticizer stabilized Di-Octoyl Phthalate (DOP) valued at Rs. 3,07,216/- and claimed clearance under OGL as per Public Notice (ITC) 32 dated 17.7.92. The imported DOP was considered a raw-material and not spares or components of consumer durable and therefore, the provisions of para 23 (ITC Policy Book 1992-97) and Public Notice (ITC) 32 dated 17.7.92 was considered not to be applicable and therefore the goods were not covered under O.G.L. DOP falls under para 156 (I), Sr.

No. 7 of the Negative List of the Imports of the policy 1992-97 A.M. and therefore, required a valid import licence for the clearance of the same. During the personal hearing before the lower authority the appellants submitted that they had applied to DGFT, New Delhi for issue of necessary licence, but were advised by DGFT vide their letter dt.

7.10.94 that no licence is required for the import of the subject goods. So on the basis of DGFT's clarification they claimed clearance under Public Notice (ITC) 32/92. The case (SIC) that phthalate Plasticizers are specifically mentioned at Sr. No. 7 of para 156 (I) of the Negative List of imports in Import Export Policy 1992-97, hence their import clearly requires a licence which the party does not possess. The appellants submitted a copy of their request to DGFT for issue of licence for the subject DOP, and the reply from DGFT's office, wherein it has been stated that the item DOP is freely importable in terms of P.N. 32 dated 17.7.92. Public Notice 32/17-7-92 clearly indicates that the actual users are allowed to import accessories, components, parts and spares of consumer durable except those which are specifically included in the negative list of imports. The impugned goods do not fall in the category of spares, components and parts of consumer durables. Further, the impugned goods are specifically mentioned in the negative list of imports and therefore in terms of Public Notice No. 32, the appellants were considered not authorised to import the impugned goods without a valid import licence. The import was clearly un-authorised even if it was devoid of mens-rea. The lower authority stated in the impugned order that to be legally binding on Customs clarification has to be a formal clarification issued through a circular and not an individual letter addressed to a party and signed by an officer other than DGFTs without the letter's manifest and specific authorisation. In view of the above, the lower authority confiscated the impugned goods under Section 111(d) of the Customs Act, 1962, but allowed redemption of the same on a fine of Rs. 1,00,000/-.

The lower authority also imposed a penalty of Rs. 1,000/- on the appellants under Section 112 of the Customs Act, 1962.

3. The appellant filed the appeal before the Commissioner (Appeals) and only asked for leniency.

5. The contention of the appellant in the appeal memorandum is that they applied to DGFT for issuance of the licence and the DGFT in response to their application in found the appellant that the no licence is required for the import of such goods. This factual aspect is not disputed by the Revenue. In these circumstances I find it

is a fit case for reduction in the redemption fine, therefore the redemption fine is reduced Rs. 50,000/- otherwise the impugned order is upheld.

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