Cymex Time Ltd. Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-11-2003

Reported in : (2003)(157)ELT594Tri(Mum.)bai

Judge : S T S.S., K Kumar

Appellant : Cymex Time Ltd.

Respondent : Commissioner of Customs

Judgement :

1. The appellants are manufacturers of Quartz Alarm Clocks in SSI Sector. The appellant placed an order favouring to M/s. Wellgain Precision Products Ltd., Hong kong by opening of L/C (Letter of Credit) bearing No. 023069614, dated 8-3-1996 that was further amended on 21-3-1996.

(i) In pursuance of order and L/C the Hong kong supplier supplied the goods vide their invoice dated 1-4-1996 and shipment made by Air under AWB No. 160-2915 4720 - flight No. CX 007, dated 3-4-1996. The appellant filed Bill of Entry No. A-1804/8(5), dated 3-4-1996 in Bombay Air Customs and by their letter dated 23-4-1996 stated that the cases for Alarm clocks under the above invoice had been imported and the imported goods are the parts of Alarm clocks and the same are not complete cases and hence should be freely importable.

(ii) The goods were examined on first check basis and samples drawn.

The customs authority was of the opinion that these clocks cases parts are in CKD condition and are restricted.

(iii) A personal hearing was held, however the Dy. Commissioner did not agree with the submissions made by the appellant and observed that the goods imported are restricted item as per the current policy, goods are liable to confiscation. Accordingly, order confiscating the goods under Section 111(d) of the Customs Act, 1962 giving the appellants an option of redemption on payment of fine of Rs. 75,000/- and a penalty of Rs. 10,000/- on the appellants under Section 112(a) of the Customs Act, 1962 was passed.

2. The appellants appeared before Commissioner (Appeals) and submitted that a policy change has been brought into operation by the ITC authorities w.e.f. 25-3-96 in respect of these items now re-classifiable under ITC Heading 9112.80, but the authority concerned has oversighted the facts that the L/C was opened on 8-3-96 and therefore, they are not hit by the policy change. Since the L/C was opened prior to change in ITC policy, these items should have been permitted to be cleared as OGL as per the practice prior to 25-3-96.

The Commissioner (Appeals) agreed to the contentions of the appellant but said that the period from the date of the opening of the L/C and the date of the payment of duty (i.e. 4-5-96) exceeds 45 days and therefore the appellants are hit by the policy change w.e.f. 25-3-96.

However, he reduced the fine and penalty from Rs. 70,000/-and Rs. 7,000/- respectively.

3. When the present appeal was called, none appeared for the appellant.

Heard the DR and considered the grounds in appeal and find - (a) The finding of Commissioner (Appeals) that L/C was opened on 8-3-1996 and case was cleared payment of duty on 4-5-1996 which would be more than 45 days is ignoring the provisions of Para 5 of the policy. It is on record that the imports were made by Airway Bill of flight dated 3-4-1996. It is the date of shipment or import which is to be reckoned for the purposes of determining the applicability of the new restrictions and not the date of payment of duty and clearance of goods as held by the Commissioner. Since in this case shipment was made on 3-4-1996 and Bill of Entry for import was filed on 3-4-1996 and the amendment to Policy is dated 25-3-1996 the imports are covered by Para 5 of the Exim Policy 1992-1997, the order of the Commissioner cannot be sustained and is required to be set aside and appeal allowed with consequential benefit.