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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-11-2003

Reported in : (2003)(157)ELT150TriDel

Judge : K Usha, N T C.N.B., P Chacko

Appellant : Magnet Users Association

Respondent : Designated Authority

Judgement :

1. This appeal of M/s. Magnet Users Association is directed against the Customs Notification No. 123/2001-Cus., dated 12-12-2001 and Final Findings dated 23rd October, 2001 of the Designated Authority, Ministry of Commerce, pursuant to which findings, the aforesaid Customs Notification was issued. The final findings were reached upon a review of the anti-dumping duty imposed on Hard Ferrite Ring Magnets under Customs Notification No. 103/99-Cus., dated 6th August, 1999.

2. Under final findings impugned herein, the Designated Authority recommended the imposition of a higher amount of anti-dumping duty. The anti-dumping duty imposed is the differential amount between US $ 1123.8 per MT and landed value of imported "Hard Ferrite Ring Magnet".

This duty is applicable to all exports to India of the said ring magnets from all exporters/producers from People's Republic of China.

3. In the appeal, upward revision of duty has been challenged on many grounds like rate of anti-dumping duty cannot be enhanced in a review proceeding, the Designated Authority was in error in treating China as a non-market economy, the working out of the normal value of Chinese goods has been done without proper basis, imposition of anti-dumping duty on all grades of ring magnets was not justified etc. However, during the hearing of the case, it was submitted that the substantive grievance of the appellant is on account of imposition of anti-dumping duty on all grades of magnets, including the grades which are not manufactured in India. It was submitted that if this grievance is removed, much of the difficulty faced by the magnet users would be removed.

4. The ring magnet in question is an industrial input and the appellants are themselves domestic industry manufacturing speakers using these imported magnets. The submission of the appellant with regard to imposition of duty "on all grades and sizes" is that the Indian industry on whose petition the duty has been imposed does not manufacture all varieties of ring magnets. Therefore, it is the appellant's contention that imposition of anti-dumping duty on the varieties which are not manufactured in India only causes undue hardship to the importers of those varieties without, in any way, benefiting the Indian manufacturers of magnets. It is pointed out that import of grades which are not manufactured in India offer no competition to other grades of ring magnets manufactured in India and therefore, the question of their offering unfair competition and causing injury to domestic industry cannot arise. Appellants, therefore, have urged that it is just and fair that varieties which are not produced in India are excluded from the operation of the anti-dumping duty.

5. In order to ascertain the correct factual position on the above submission of the appellants, we passed the following Miscellaneous Order on 20-5-2003 : "The issue involved in this appeal at the instance of importers challenging imposition of duty on Hard Ferrite Ring Magnets (HFRM) all grades and sizes is that even though this product is commercially recognised and traded under different grades/types, a uniform rate of duty has been imposed. According to the appellant, the Designated Authority should have identified a techno commercial marker separating various grades/sizes of the magnets and recommended duty only on

those grades/sizes manufactured by the domestic industry in India.

After hearing both sides for some time, we find that there is merit in the contention raised as above. We, therefore, direct the Designated Authority to examine the issue and come out with a finding on techno commercial market for the purpose of classifying the product. In order to arrive at such a finding the Designated Authority will rely on the data already available with it and also additional data to be provided by the parties. The parties would make available such data within a period of two to three weeks from today. The Designated Authority will also take advice of technical experts in the matter. The report shall be filed by the Designated Authority on the above issue to this Tribunal on or before 4-7-2003.

Copies of report shall be made available to all parties. The matter to come up for hearing on 30-7-2003." In compliance with the above direction the Designated Authority filed its report dated 28th July, 2003 along with the expert opinion dated 4-7-2003 of Shri U.C. Pandey, Director in the Department of Information and Technology. The appeal was again heard on 11-8-2003 in the light of the technical and commercial data filed in response to our Miscellaneous Order.

6. During the hearing on 11-8-2003, ld. Counsel for the appellant has pointed that the position emerging from technical and commercial data filed in response to the Miscellaneous Order is that "Hard Ferrite Magnets" are characterised by their properties such as Residual Induction Br", "Coercive force (Hcb)", "Intrinsic coercive force (iHc) and "Maximum Energy Product (BH max)". It is his submission that on the basis of "maximum energy product (BH max)", which is a distinctive property of each grade of magnet, categorisation of magnets could be carried out and grades which are not manufactured in India excluded from the levy of anti-dumping duty. Learned Counsel further pointed out that this characteristic is taken note of in the various specifications including Indian Standards Specification. Learned Counsel also pointed out that the submission of the domestic industry engaged in the manufacture of magnets as stated in their review petition before the Designated Authority was also that antidumping duty be imposed on magnets with Maximum Energy Product 2.8 MGOe min. He referred to page 10 of the review petition submitted by the Domestic Industry and pointed out that "product

under consideration" has been described by the domestic industry as "Hard Ferrite Ring Magnets", "energy product (BH max) : 2.8 MGOe min", finding application in Loudspeakers/PA System/Telecommunication etc. He also pointed out that the same petition described "like products" as under : The Hard Ferrite Ring Magnet produced and sold by the Domestic Industry and imported from China are being used interchangeably by the consumers in India. Hard Ferrite Ring Magnets imported from China and produced by petitioners are 'like articles' as envisaged under Rule 2(d) of the Antidumping Rules." Based on these, the learned Counsel for the appellants submitted that imposition of anti-dumping duty on magnets with energy product (BH max) below 2.8 MGOe min would be going beyond the prayer in the review petition itself and the requirements of protecting domestic industry from injury caused by dumped imports.

7. We have heard the submissions of the Domestic Industry as well as the learned Counsel for the Designated Authority. The only submission of the domestic industry against excluding ring magnets with energy product below 2.8 MGOe min is that the domestic industry would be able to produce those varieties also.

8. Causal link between injury to domestic industry and import of dumped goods is a requirement in law for imposition of anti-dumping duty on dumped goods. In the present case, it is clear from the review petition of the domestic industry itself that interchangeability and consequent competition is in regard to hard ferrite ring magnets of energy product (BH max) 2.8 MGOe min and above. Import of Hard Ferrite Ring Magnet of below energy product (BH max) 2.8 MGOe min cannot have any effect on the Indian domestic industry and be the cause of injury to domestic industry. From the various materials produced before us, both technical and commercial, it is clear that energy product (BH max) is a definitive and distinguishing characteristic of hard ferrite ring magnet and that characteristic offers a sound basis (techno commercial marker) for the categorisation of the magnets in question. There is no justification for including grades of ring magnets which are not produced in India for the purpose of imposition of anti-dumping duty.

Exclusion of such products from the scope of antidumping duty is warranted. Customs Notification is required to be suitably modified for this purpose.

Accordingly, the following modification in Customs Notification No. 123/2001-Cus., dated 12-12-2001 is ordered : "The present entry under Column (3) of the Table to Notification, viz. "Hard Ferrite Ring Magnet (HFRM) of all grades and sizes including in unmagnetised form" shall be replaced by the entry "Hard Ferrite Ring Magnet (HFRM) of Energy Product (BH max) 2.8. MGOe and above including in unmagnetised form"."

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