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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-19-1987

Reported in : (1989)(43)ELT747TriDel

Appellant : Narang Wool Co.

Respondent : Collector of Customs

Judgement :

1. The appellants, M/s. Narang Wool Co. imported Rabbit Skin, Raw by SS Ganguin under Bill of Entry Cash No. 8532 dated 22-5-1981 and by SS Renoir under Bill of Entry Cash No. 2684 dated 28-3-1981, countervailing duty had been collected in respect of both consignments under Section 3(1) of the CTA trading the goods as falling under T.I.68 CET. In respect of consignment under bill of entry cash No. 2684 dated 28-3-1981 auxiliary duty of customs had also been collected and though this was also the subject-matter of issue before the lower authorities and a claim had been made with reference thereto in the revision petition also Shri J.S. Agarwal, Advocate for the appellants stated before us that the claim in this regard is not being pressed.

Therefore in these appeals we are concerned only with the collection of countervailing duty as mentioned above.

2. In respect of both consignments the appellants had applied for refund of countervailing duty and same had been rejected by the Assistant Collector under orders dated 27-3-1982 and 2-11-1982. The appeals preferred against the said

orders had been dismissed by the Collector of Customs (Appeals) concerned under order dated 17-11-1982 and 16-2-1983 respectively. It is the revision petitions preferred against the said orders, that are, on transfer, now before us, as these two deemed appeals. Since the issue involved in both appeals is common the appeals were heard together and are being disposed of under this common order.

3. We have heard Shri J.S. Agarwal, Advocate for the appellants and Shri K.C. Sachar for the Department.

4. The first contention of Shri Agarwal was that the rabbit skins, raw, imported by the appellants cannot be said to be manufactured goods on which any Central Excise duty could be levied and collected in India since firstly no such goods are produced in India and secondly the process consists of skinning the animal for separation of the skin and that no further process was carried out thereon. Whether rabbit skins, raw, are produced in India or not would not be a relevant consideration since under the explanation to Section 3(1) of the CTA duty under the said sub-section could be collected even if goods imported are not manufactured in India. So far as the second part of the contention of Shri Agarwal we are unable to accept the same since it is inconceivable that skin as removed from the animal without any further process could be exported. If they are exported in the said condition specially by ship as in the two instances in question they would have become totally useless and probably be putrefied mass before reaching the country of import.

5. Shri Agarwal contended that even if the goods would call for imposition of duty under T.I.68 CET the same would be nil in view of two exemption notifications issued under Rule 8 of the Central Excise Rules in relation to such goods falling under T.I. 68 CET. Reliance in this connection was on Notification No. 46/81-C.E., dated 1-3-1981 and Notification No. 179/77-C.E., dated 18-6-1977. The first of the said notifications exempted goods falling under T.I. 68 CET other than goods manufactured in a factory. The second notification exempted goods falling under T.I. 68 CET from payment of duty if in or in relation to the manufacture of the same, no process was ordinarily carried on with the aid of power.

6. Therefore in order to qualify for exemption from the Central Excise duty under Tariff Item 68 CET the goods should be proved to be either not manufactured in a factory or not manufactured with the aid of power. Therefore, the exemption is not a straight exemption but one hedged with conditions precedent. In so far as the goods had been manufactured abroad there is certainly no evidence that either of the said conditions would be fulfilled apart from the question whether the factory mentioned in the notification would include a factory in the foreign country also since the factory has been defined in the notification in accordance with the definition in the Factories Act. A bare assertion in ground No. 3 in memorandum of appeal in appeal No.141/83 that the rabbit skins, raw, were neither produced in a factory nor manufactured with the aid of power would not suffice as proof of such assertions.

7. In the circumstances, we hold that the claim for exemption from payment of countervailing duty in view of the two Central Excise notifications referred to above was rightly rejected by the lower authorities. In view of the said conclusion we uphold the orders of the lower authorities and dismiss both these appeals.