Collector of Customs Vs. Bharat Heavy Electricals Limited

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-20-1987

Reported in : (1987)(12)LC255Tri(Delhi)

Appellant : Collector of Customs

Respondent : Bharat Heavy Electricals Limited

Judgement :

1. Under a Bill of Entry Cash No. 3068 dated 29-3-1979 the appellants- imported goods described as 'Differential Pressure Indicator'. The goods were assessed to duty under heading 90.24(1),CTA at 40% plus 5% (AD plus CVD) at the rate of 8%. After clearing the goods the appellants applied for refund of part of the- duty (Auxiliary duty) paid by them on the ground that the imported goods were entitled to be classified under Heading 84.11(1), CTA and to the concessional assessment under Notification No. 35/79-Cus. read with Notification No.53/79-Cus. The Assistant Collector rejected the claim as unsubstantiated as, according to the Order-in-original the appellants did not, in spite of repeated requests, file certain documents called for by him.

2. The Appellate Collector before whom an appeal was filed allowed the appeal in the following order: "Having regard to evidence of end use produced, this appeal claiming benefit of 35/7.9 plus incidental benefit of auxiliary duty is hereby allowed".

The Government of India issued a Show Cause Notice on 3-7-1982 to the respondent under Section 131 of the Customs Act, 1962. The reasons for which the Government wanted to review the order was as follows: "4. The statutory rate of duty on Differential Pressure Indicator falling under Tariff Heading 90.24(1) is 40% ad valorem. The importers have claimed that these Differential Pressure Indicators are used for the assembly of Compressors. These compressors appear to attract the same statutory rate of duty (40% ad valorem) under Tariff Heading 84.11(1). That is to say, that, in this case, Custom Notification 35/79, dated 15-2-1979 does not partially or wholly exempt the goods free from payment of basic Customs duty. Customs Notification 53, dated 1-3-1979 by virtue of which they had sought exemption from payment of Auxiliary duty, is. not applicable to this case since, although Customs Notification 35/79 figures in the table annexed to Notification 53, dated 1-3-1979, it does not partially or wholly exempt the goods from payment of basic customs duty.

Therefore, the Appellate Collector's order giving benefit of exemption from payment of auxiliary duty of Customs does not appear to be correct." 3. The respondents resisted the notice submitting that the goods were correctly entitled to concessional assessment under Notification No.35/79 and, consequently to the benefit of Notification 53/79.

4. The matter on statutory transfer to the Tribunal is now an appeal before us.

5. We heard Shri J. Gopinath, the learned S.D.R. Shri Gopinath reiterated the grounds contained in the review notice and submitted that the rates of duty under headings 94.24(1) and 84.11(1) were the same. As a result of applying notification No. 35/79 the goods were reassessed under 84.11(1) but the basic customs duty remained the same.

Shri Gopinath submitted that as the basic customs duty under both the headings was the same, the Appellate Collector wrongly allowed the concession of Notification 35/79. He pointed out the reasons given in para No. 4 of the Show Cause Notice issued to the respondents.

6. Shri R. Subramanian, the learned Deputy General Manager opposing the revenue's arguments referred to the respondents's reply dated 30th August, 1982 to the review show cause notice and submitted that the imported goods were eligible to the concessional assessment under Notification No. 35/79. Shri Subramanian argued that even if the basic rate of duty under the two headings namely 90.24(1) and 84.11(1) was the same, the respondents stood to gain by availing the benefit of Notification 35/79 inasmuch as the imported goods would get the benefit of exemption from auxiliary duty under Notification 53/79-Cus. In support of his arguments Shri Subramanian cited an earlier decision of the Tribunal in the matter of Embarkation Headquarters v. Collector of Customs, Madras 7. We have considered the submissions made by both the sides. We have also referred to the judgement of the Tribunal cited by the respondents. In this judgment the Tribunal held that "If an article is exempt from basic customs duty in the Tariff itself and there is a concurrent or overlapping exemption available to the said article under an exemption notification also, the exemption from auxiliary duty, which applied to articles exempt from basic duty by virtue of exemption notifications, would be available." 8. We see no reason to differ from this earlier view of the Tribunal.

It is not the case of the Government that the goods imported in this case were not entitled to the benefit of Notification 35/79. Once the goods were so entitled the appellants (respondents ?) had a right to claim the application of the notification to their goods. The fact that the rate of duty payable by them on merits was the same as the rate of duty payable under notification does not take away the respondent's right to claim benefit of the notification especially when the concurrent notification would lead to a further benefit under another notification No. 53/79-Cus. It has not been shown to us that the Appellate Collector erred in extending the benefit of Notification 35/79-Cus to the importers. In the circumstances we find no reason to interfere with the order of the Appellate Collector and see no mistake in the same. In this view we dismiss the appeal.