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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-24-1987

Reported in : (1989)(42)ELT465TriDel

Appellant : Mandovi Pellets Ltd.

Respondent : Collector of Customs

Judgement :
1. The Apellants M/s. Mandovi Pellets Ltd., Goa, is a Public Limited Company in joint sector, having an iron ore pelletization plant. In 1977 they imported the plant, machinery, equipments and spare parts for use in the plant. They were granted the concession available to the goods under Notification No. 324/CUS/76. Among the goods imported, there was a consignment of "recuperation fan shafts". When erection was going on towards the end of 1978 it was found that one of the fan shafts was damaged and could not be used. According to the appellants, the damage having been discovered during the warranty period, the exporters offered free repair and the shaft was sent to Germany under proper customs supervision. After repair, the fan shaft was brought to India in the month of December, 1979. The appellants sought clearance of the shaft, duty free, under Notification 324/76. But the customs department did not agree and charged duty on the shaft. However, the benefit of Notification No. 204/Cus. was extended to it. According to this Notification the customs duty chargeable was limited to the estimated repair charges, freight and insurance incurred. The Asstt.

Collector rejected the claim for refund of the amount wherein the appellants claimed the benefit of the notification No. 324/76.

2. The appellants filed an appeal before Collector of Customs (Appeals). The Collector rejected the appeal. Hence the present appeal.

3. We heard Shri O.P. Vaish (with Shri J.K. Shah) Advocate for the appellants and Shri J. Gopinath, Ld. SDR for the respondent. The Ld.

Counsel for the appellants submitted that the assessment of the goods under Heading 84.63-CTA was wrong and that the goods should have been granted the duty free clearance Under Notification No. 324/76. Shri Vaish submitted that the observations of the authorities below that reimportation is not importation, was wrong as Customs Act recognise only importation and not reimportation. The Ld. Counsel argued that every reimport constitutes an import though the opposite is not the case. He further argued that the shaft in question was ab-initio not liable to duty as it was exempted under Notification No. 324/76 and liability cannot be created merely because it was repaired abroad during the waranty period. He further argued that application of the Notification No. 204/76, an exemption Notification, to create liability to duty was wrong. Shri Vaish further argued that classification of the goods was not relevant as Notification 324/76 does not prescribe any classification. Finally, Shri Vaish submitted that Notification No.324/76 did not prescribe that the goods to be eligible to concession contained therein should be imported with the main consignment.

According to him, a spare part can also be imported and be eligible to free assessment under the said notification. Alternatively Shri Vaish pleaded that the goods may be given the benefit of project importation under the Heading 84.66-CTA.4. Shri J. Gopinath, Ld. SDR opposing the arguments submitted that the benefit of notification No. 324/76 cannot be extended to the goods as conditions laid down therein, were not satisfied. He argued that the Notification No. 204/76 did not create a liability on the subject goods but limited the customs duty payable to only the repair cost, freight and insurance and excluded the value of the goods themselves. He further submitted that a mandatory condition for the benefit of porject import under the Heading 84.66 was the registration of a contract and in this case no such registration was done in respect of the subject goods. Therefore, this benefit cannot be extended to the appellants.

5. We have considered the arguments of both sides. In so far as the benefit of project importation is concerned, we agree with the arguments of the Ld. SDR and the observations in the Asstt. Collector's order which was upheld by the Collector (Appeals). This is because no contract was registered before the importation and the import licence was not endorsed for project importation. The registration of the contract is mandatory requirement.

6. In so for as the Notification No. 324/76 is concerned, we note that this Notification exempts plants, machinery, equipments and their spare parts when "imported" into India for use exclusively for manufacturing iron ore pallets to be exported out of India. The authorities below held that since the goods were not imported but were reimported, this Notification did not apply. We have noted the arguments of the Ld.

Counsel for the appellants that what took place was importation as every reimport constitute an import. On careful consideration we are not able to agree with this argument. As submitted by the Ld. Counsel reimportation has not been defined under Section 2 of Customs Act 1962 whereas import has been defined. But when we are interpreting an exemption notification, we have to take the words in the notification as they are and arrive at the meaning thereof. The word "reimportation" is known and has been in use for m long time. Section 20 of the Customs Act specifically refers to "reimportation" (of goods produced or manufactured in India). Therefore, there is a clear meaning to the word "reimportation" to the effect that reimportation is importation of goods which have been exported from India. The Notification No. 324/76 refers only to importation and does not cover a situation like the present one wherein goods have been exported and have been reimported.

7. The customs have extended the benefit of another notification No.204/76 to the goods in question so that the entire value of the "recuperation fan shaft" was not taken into consideration for levy of customs duty but only the estimated cost of repairs, the freight and the insurance only. Application of this notification to the

goods in question did not create fresh liability but limited the liability in the manner aforesaid. We, therefore, do not agree with the argument that the affect of applying this notification was to create fresh liability on the goods. In the absence of the notification the appellants would have paid much more customs duty.

8. In the light of these observations, we do not find any reason to interfere with the impugned order. We, therefore, dismiss the appeal.

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