Surya Cables Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-18-2003

Reported in : (2004)(165)ELT305TriDel

Judge : A T V.K., P Bajaj

Appellant : Surya Cables

Respondent : Commissioner of Customs

Judgement :

1 These two appeals, arising out of two different orders, are being decided together as the issue involved is identical in both these appeals. The issue involved in both these appeals is whether the benefit of Notification No. 20/99-Cus. is available in respect of fibreglass roving imported by them and whether the demand is time-barred under Section 28 of the Customs Act, 1962.

2. Shri Piyush Kumar, learned Advocate, submitted that both these appeals have been dismissed for want of prosecution by Tribunal's Order Nos. 638-39/03-B, dated 29-8-03; that the Consultants' non-appearance on the date of hearing was totally unintentional due to urgent reasons.

He, therefore, requested for restoring the appeals to their original numbers.

3. We heard Shri V. Valte, learned Senior Departmental Representative, who has no objection if the appeals are restored.

4. In view of the submissions made by the learned Advocate, we recall our final Order dated 29-8-03 and restore the appeals to their original numbers.

5. Learned Advocate mentioned that the Appellants manufactured wires and cables including PVC insulated self-supporting drop wire with fibre-glass roving that for this purpose importation of fibreglass roving under Notification No. 20/99 Cus., they obtained Registration Certificate under Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996; that thereafter they executed the end-use bond and obtained requisite approval from the jurisdictional Central Excise authorities; that they had imported fibreglass roving which were cleared on payment of duty at concessional rate under Notification No. 20/99-Cus. and utilised the goods for manufacturing PVC insulated self-supporting drop wire with fibreglass roving; that the Commissioner under the impugned orders has disallowed the benefit of exemption Notification, has confirmed the demand of duty and imposed penalty holding that concessional rate of duty was applicable only if the impugned goods are used for manufacture of telecommunication grade FRP and they did not have the facility to manufacture telecommunication grade FRP. The learned Advocate, further, submitted that the imports were made by both the appellants in October and November, 1999 whereas the show cause notice had been issued to them on 26-6-2001; that as such show cause notice is beyond the normal period of time-limit specified in Section 28 of the Customs Act; that the extended period of limitation is not invocable as the goods were clearly and completely described in the Bill of Entry and other related imported documents; that further they had declared in all the documents presented to the Customs or Central Excise authorities that the final product to be manufactured out of imported fibreglass roving was PVC insulated self-supporting drop wire with fibreglass roving; that accordingly, the extended period of limitation is not invocable as they had not suppressed any material facts from the Department. The learned Advocate also submitted that even on merit, they are eligible to avail the benefit of the exemption Notification; that as per Hawley's Condensed Chemical Dictionary "reinforced plastic" is a composite structure comprised of thermosetting or thermoplastic resin and fibres, filaments, or whiskers of glass, metal, boron or aluminium silicate.

Unless otherwise indicated, this term refers to fibreglass reinforced plastic (FRP); that the manufacturing process involves passing of copper wire along with fibreglass roving through a bath of telecommunication grade PVC compound through the process of extrusion; that in this process wire and FRP essentially comes into existence simultaneously and the wires is ultimately used in telecommunication.

6. Countering the arguments Shri V. Valte, learned Senior Departmental Representative reiterated the findings as contained in the impugned order and emphasized that the impugned goods imported by them had not been utilised for manufacture of telecommunication grade FRP as the same had been used for manufacture of PVC Coated drop wire; that extended period of limitation is invocable if the material facts had been suppressed by them from the Department; that they had misrepresented the facts at the time of importation; that they had suppressed the fact that they had no facility to manufacture telecommunication grade FRP and they had actually imported goods for manufacture of PVC insulated drop wire. He also mentioned that fibre resin plastic (FRP) is a clear and distinct product used in the telecommunication purposes; that FRP and the self-supporting PVC drop wire are different products though the later may also find use in the telecommunication industry; that merely because the appellants manufacture a product used in telecommunication industry, it cannot be concluded that the imported item is eligible for the exemption.

7. We have considered the submissions of both the sides. We find, substantial force in the submissions of the learned Advocate that the extended period of limitation for demanding duty under Section 28 of the Customs Act is not invocable in the facts and circumstances of the present matter. As per the provisions of Section 28 of the Act, a show cause notice has to be issued within 6 months from the relevant date for demanding duty short-levied etc. and in case of collusion, wilful misstatement or suppression of facts, the show cause notice can be issued within a period of 5 years. It is the case of the Department that the Appellants had wilfully misrepresented the facts and suppressed the fact that they did not have the facility to manufacture telecommunication grade FRP. No doubt the Notification No. 20/99, dated 28-2-99 provide the concessional rate of duty in

respect of fibreglass roving for manufacture of telecommunication grade FRP subject to the condition that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty For Manufacture of Excisable Goods) Rules, 1996. A Registration Certificate under 1996 Rules had been issued to both the Appellants and bonds were executed by them. A perusal of the bond executed by M/s. Nisha Cables Company Pvt.

Ltd. reveals that it is clearly mentioned therein that they have been permitted by the Assistant Commissioner to obtain a specific quantity of fibreglass roving for use in their factory in the manufacture of PVC insulated self-supported drop wire with fibreglass roving. We also observe that the similar description of the final product was mentioned by them in the application for registration under the Customs Rules, 1996. We also observe that subsequently the Assistant Commissioner issued to them end-use Certificate wherein it is clearly mentioned that the Appellants have used fibreglass roving imported by them in the manufacture of PVC insulated self-supporting drop wire with fibreglass roving and "for fulfilling the condition of import under concessional rate of duty". In view of these facts, it is not open to the department to claim that the Appellants had suppressed the fact of the final product manufactured by them. In view of this the larger period of limitation for the purpose of demanding the Customs duty is not invocable in the present matters. We, therefore, set aside the impugned orders on the aspect of time-limit itself without going into the merits of the case. Both the appeals are allowed.