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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-19-2004

Reported in : (2004)(93)ECC78

Judge : A T V.K., P Chacko

Appellant : Rochi Ram and Sons

Respondent : Cce

Judgement :

1. M/s. Rochi Ram & Sons have filed the present appeal being aggrieved with the Order-in-Original No. 34/2002 dated 10.12.2002 passed by the Commissioner of Customs.

2. Shri C. Harishankar, learned Advocate, mentioned at the outset that the Appellants are not disputing the demand of Customs duty amounting to Rs. 5,379 confirmed against them in respect of 2000 leather straps imported by them in excess of the quantity shown in Bill of Entry No.168 filed by them. In view of this we uphold the demand of Customs duty Rs. 5379.

3.1 The learned Counsel further mentioned that the Commissioner, under the impugned Order, has confiscated watch movements imported by them under Bill so Entry Nos. 167 and 168 on the ground that the conditions of the Notification No. 1/64-Cus dated 18.1.64 were violated in as much though the goods were bearing the trade mark "ROCHEES" of the appellants, the name of the manufacturing

country and the manufacturer's name were not mentioned thereon.

3.2 The learned Advocate submitted that the Rajasthan Watch & Parts Manufacturers Association had taken up the matter with the Central Board of Excise & Customs (The Board in short) to amend the Notification; that it had been submitted by the said Association that marking of the country of origin on the parts would convey an impression that the entire watch was manufactured abroad which would be against the spirit of the Trade and Merchandise Marks Act, 1958; that the confusion would increase if different parts were manufactured in different countries; that the Board, vide letter No. 450/40/97-Customs IV dated 6.5.97 addressed to the Commissioner of Customs, Jaipur issued the following clarification: "Board is considering the need for intention or otherwise of this notification in the context of changed circumstances. Member (cus) desires that such consignments should not be detained/seized. You are therefore, requested to allow clearance of such consignments under bond without bank guarantee pending, examination of issue by the Board." 3.3. He also stated that further directions were issued by the Board vide letter F. No. 450/40/97-Cus IV dated 20.1.98 that the Bank guarantee executed earlier by the parties may be released while retaining the bonds and assessment be finalized only after the final decision in this regard; that pursuant to this, clauses (v) and (vi) of Notification No. 1/64-Cus were omitted by Notification No. 61/2000-Cus dated 10.10.2000. He now contended that deletion of condition (v) of the Notification No. 1/64 was clarifkatory in nature and as such the same was applicable retrospectively in view of the ratio of the Tribunal's decision in Surendra Kumar Jain v. CCE, 1990 (45) ELT 127 (T) wherein it has been held that "procedural provisions of law can be given retrospective effect." Reliance has also been placed on the decision in the case of Balunml Jamnadas Batra v. State of Maharashtra, 1983 (13) ELT 1558 (SC). He also mentioned that the Commissioner has relied upon the decision in CCE v. Wood Craft Products Ltd., 3995 (50) ECC 122 (SC) : 1993 (77) ELT 23 (SC) which is, in fact, in favour of the Appellants; that it has been held by the Supreme Court in Wood Craft case that amendments made to end the dispute raised by the manufacturers are necessarily clarificatory. He finally contended that the Board in the present matter had directed the Commissioner, to pending the decision on controversy, to permit clearance of the goods on the basis of bond alone; that if

the amendment is to be treated as only prospective in nature it would frustrate the intention of the said directive.

4. Countering the arguments, Shri Virag Gupta, learned DR, submitted that it has not been disputed by the Appellants that the condition stipulated in the Notification was violated when the impugned goods were imported by them; that there is no mention in the amending Notification No. 61/2000 that it has to be given retrospective effect; that no proof has also been brought on record to show that the relevant Bills of Entry were provisionally assessed; that in absence of any indication that amendment would have retrospective effect, the same has to be made effective only prospectively, 5. We have considered the submissions of both the sides. Condition No.(v) of Notification No. 1/64-Cus stipulated that the benefit of Notification would not be available if the imported goods bore any name or trade mark of any person who is a manufacturer, dealer or trader in India unless: (i) the name or trade mark had to be accompanied by a definite indication of the goods having been made or produced outside India, and (ii) the country of manufacture is indicated in large and conspicuous letter.

This condition No. (v) has been deleted by Notification No. 61/2000-Cus. The Revenue has not controverted the fact that Rajasthan Watch & Parts Manufacturers Association had taken up the matter of inapplicability of condition No. (v) in view of the Provisions of Trade & Merchandise Marks Act. The Revenue has also not disputed the specific directions by the Board to Commissioner of Customs, Jaipur to allow clearance of consignment under Bond pending examination of issue by the Board and to finalize the assessment only after final decision regarding "the need for intention or otherwise of this Notification in the context of changed circumstances." Subsequently Notification No. 1/64 was amended by Notification No. 61/2000-Cus which omitted condition No. (v). We find force in the contention of the Appellants that the amendment carried out in 2001 is in the nature of a clarification and has been effected in the context of changed circumstances and in pursuance to the representations made by the Association and in furtherance of directions issued by the Board to the Commissioner concerned. This view is strengthened by the decision in the case of Wood Craft Products. In this case amended Note 5 in Chapter 44 of Central Excise Tariff was

introduced with effect from 19.3.90 defining the expression "similar laminated wood" in Heading No. 44.08. Note 5 was again amended with effect from 1.3.92. The Supreme Court has held as under: "In our opinion, the expression "similar laminated wood" in Heading No. 44.08 as it stood from the beginning must be construed to include within it block boards of all kinds so that the amendment in Chapter Note 5 w.e.f. 19.3.1990 and thereafter w.e.f. 1.3.1992 merely clarified and made explicit that which was implicit in the heading throughout. These amendments were obviously made to end the dispute raised by the manufacturers by an express statement. Any further discussion with reference to the definitions in the ISI Glossary is unnecessary for the reason already indicated." We, therefore, hold that the amendment effected by Notification No. 61/2000 in Notification No. 1/64-Cus has to be given effect retrospectively. Accordingly we set aside the confiscation of impugned goods covered by Bills of Entry No. 167 and 168.

6. Regarding third charge, the learned advocate submitted that the watch movements were not completely assembled as they did not have hour wheels or washers and, therefore, could not be classified under Heading No. 91.10 of the Schedule to the Central Excise Tariff Act; that the impugned goods had been cleared only after proper examination by the Customs Authorities; that no samples were drawn from the goods; thus there was, at that stage, obviously no doubt in the mind of the Customs Officers who permitted clearance that the goods were correctly classified; that in such circumstances, when the Department is, subsequent to the clearance, seeking to question the classification, it had to discharge the burden to establish their classification; that this burden could not be discharged by merely recording statements, as classification could not be decided by statements; that the attempt of the Department to draw an analogy with goods imported under an earlier Bill of Entry No. 209 dated 19.2.1997 is inapt as those goods were fully assembled. He also emphasized that the Appellants had requested that, as no samples had been taken, their overseas suppliers could be contacted to verify the correctness of their averment; that the Department did not, however, choose to adopt this course. He, therefore, submitted that the confiscation of the watch movements and the penalty imposed are not sustainable.

7. The learned DR, on the other hand, submitted that Shri O.P. Pareek as well as Shri Naresh Moolrajani, in charge of the Appellant firm had stated that the impugned goods were complete and in fully assembled condition and were not parts; that this is also corroborated by the fact of import made by them earlier under Bill of Entry Nos. 203 dated 17.2.97 and 209 dated 19.2.97 under which similar goods in complete and fully assembled condition had been imported by them.

8. After considering the submissions of both the sides we observe that it has not been rebutted by the Revenue that the impugned goods as imported by the Appellants were allowed clearance by the Customs Authorities after proper examination. The mere fact that in the past they had imported goods complete and fully assembled conditions does not mean that the goods imported subsequently were also fully assembled goods and not parts. The learned Advocate has rightly contended that in the absence of any sample, the classification of the goods cannot be changed merely on the basis of statements and post import. It was necessary for the Department to adduce some corroborative material/evidence. For want of such corroboration, the confiscation of goods cannot be sustained. We, therefore, set aside the confiscation of goods.

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