Rapco Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-10-2004

Reported in : (2004)(167)ELT182Tri(Mum.)bai

Judge : J Balasundaram, A M Moheb

Appellant : Rapco

Respondent : Commissioner of Customs

Judgement :
1. The appellants imported 27 units of High Pressure cleaners and sought clearance under OGL. The Commissioner (Appeal) while rejecting the appellants' appeal before him confirmed the lower authority' finding that the goods under import are consumer goods and require an import licence as per para 156 (A) Part II of 92-97 Policy.

2. The appellants plea is that the Department cleared the same goods under OGL when the present appellant imported them at Bombay Air Cargo Unit; that several other importers cleared the goods under OGL; that the goods are classified under Chapter 8424.30 of Customs Tariff which is a chapter for machines; that the lower authorities laid too much emphasis on the catalogue of the product indicating that the appliance can be used around the house; that in fact the appliance has industrial uses as well such as sandblasting etc; that the imported goods are machines and not consumer goods; that the appliance is such that it can not be used inside a house because of the pressure with which the water jets out; that the

appliance can cause damage to electrical fittings etc. when used inside a house as it is capable of jetting out large volumes of water and that the department is no allowed to take different stands at different points of time.

4. The Ld. DR pointed out that the goods imported satisfy a human need directly without further processing, that the goods are more powerful than the ones that are ordinarily used do not make them industrial goods, that the fact that similar goods are cleared under OGL does not mean that the Department is prohibited from taking a correct stand and that the appellants while stating that several other importers also got the same goods cleared under OGL failed to submit copies of Bs/E under which they were cleared.

5. We observe that the impugned goods are consumer goods as they satisfy a direct human need (cleaning) without any further processing.

The fact that the same goods were cleared under OGL was taken note of by the adjudicating authority. Consumer goods remain to be consumer goods irrespective of the fact that the same goods were considered good enough for clearance under OGL. The goods in question are consumer goods and are covered under Para 156(A) Part-II of 92-97 Policy and therefore require an import licence. In the absence of such a licence the goods are rightly confiscated and the importer penalized.

6. Confiscation of goods upheld. However redemption fine is reduced to Rs. 75,000/- under the circumstances personal penalty is reduced to Rs. 10,000/-. The appeal is thus partly allowed.