Conic Electronics (P) Ltd. Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Jul-13-2004

Reported in : (2004)(97)ECC603

Judge : S Peeran, M T K.C.

Appellant : Conic Electronics (P) Ltd.

Respondent : Commissioner of Customs

Judgement :
1. In all these appeals, common question of law and facts are involved, hence they are taken up together for disposal as per law. The appellants have challenged the correctness of the Order-in-Appeal No.91/97, dtd. 25-11-97 disposing off three Orders-in-Original. The issue pertains to classification and valuation of the following items :---Sl.

Description Claim of Appellant Deptt/s FindingsNo.---1.

Fur Cloth 1. Classification: 6001.92 under CTA 6001.122.

(i) Plastic eyes, 9503.70 9503.41 eligible forbenefit nose, heart etc.

of Notfn. No. 85/94 (ii) Plastic washer 9503.70 Chapter 393.

Rubber parts viz.

9503.70 9504.90 eligible forbenefit half face-masks, of Notfn. No. 85/94 hair-mask4.

Skull Mask 9503.70 9504.90 eligible forbenefit5.

Dynasaurs 9503.70 9504.90 eligible forbenefit--- 2. It is the contention of ld. Advocate that the fur cloth although it is in running length is not in the nature of consumer goods as it is used as parts of toys and toys can be imported freely. He submits that it has to be classified only as parts of toys under Heading 9503.70. It is his further contention that the goods were imported from China at US$ 1.5 while the Department has compared it with another importer wherein it is of a different item and on a higher value of US$ 5.025.

It is his submission that the valuation cannot be enhanced as there is no evidence of contemporaneous imports produced by the Department and in this regard he relied on the ratio of the following judgments : -Saudagar Exports v. CC, Chennai (c) CC, Chennai v. International Iron & Alloys (P) Ltd. [2002 (49) RLT 207] (f) Modem Mktg. Agencies v. CCE, Hyderabad [2002 (139) E.L.T. 399 (Tri.)] (h) Munna Gift Centre and Ors. v. CC, Chennai [F. Nos. 827-828/2004, dtd. 27-4-2004].

3. He submits that he does not dispute with regard to the above mentioned second item i.e., plastic eyes, nose, heart, etc. while he submits that plastic washers were also parts of toys as they have been manufactured accordingly to the size of the plastic eyes, nose, heart, etc. and cannot be classified as parts of plastics under Chapter 39.

With regard to the third item namely rubber parts viz., half face masks, hair masks they are also parts of toys which have been used in the manufacture of toys. They do not require licence as toys do not require licence for import. He made the same submission with regard to the fourth item viz., skull mask. The Counsel do not want to contest on Department's finding that the fifth item Dynasaurs, are consumer items and require licence. He submits that there is no ground to confiscate the goods and to impose redemption fine. He submits that redemption fine can be imposed only with regard to the item Dynasaurs on which the fine cannot be more than Rs. 15,000/-. He prayed for setting aside penalty on the Directors Shri M.B. Gulab Rs. 40,000/- and Rs. 5,000/- on Smt. Sheila Bhudrani as there is no violation committed by them.

4. Ld. SDR submitted that the item fur was in running length and cannot be considered as part of toys. He relied on the judgment of DCP Impex Pvt. Ltd. v. CC, Chennai [2003 (152) E.L.T. 368] wherein the classification of the very item in question has been upheld by the Tribunal under 6001.92 of Customs Tariff. He submits that both the authorities have given detailed findings with regard to the valuation issue and seeks for upholding the same. He also pointed out that the plastic washer was an independent product and cannot be considered as part of the toys and its classification under Chapter 39 is required to be held. He also pointed out to the admission made by the Director in his written statement admitting classification of fabrics under Chapter 6001.92.

5. We have carefully considered the submissions and have perused the entire records. Our findings on the issue of classification and valuation of the above five items is as follows : (a) Fur cloth : We notice that the classification of this item has been upheld by the Tribunal under Chapter Heading 6001.92 of the Customs Tariff in the case of DCP Impex Pvt. Ltd. (supra). The item is in a running length and as in the nature of fabric, it cannot be considered as parts of toys under sub-heading 9503.70. Therefore, the party's claim for classification as parts of toys is rejected and classification is required to be upheld as per the Department's claim under 6001.92. There is no allegation of mis-declaration and therefore, the only issue pertaining to this item be the valuation dispute. The appellants had declared the value in the Bill of Entry at US$ 1.5. The goods had been imported from China in December 1994 while the goods compared are imports from Korea in April 1994, done by M/s. Shivaka Woogie Toy Company Pvt. Ltd., which are on a higher value. The goods imported being of a different country and different place and time, they are not comparable goods and therefore the Department has not proved undervaluation in the matter and the enhancement of value in respect of fur cloth

is set aside. Our order on the classification of fur cloth is in favour of the Department holding it to be classifiable under 6001.92 of CTA and 6001.12 of CET. Thus, the enhancement of valuation is set aside.

(b) (i) Plastic eyes, nose, heart, etc : The Department has accepted the classification under Heading 9503.70 as parts of toys and its classification is held to be under 9503.70. The party is not disputing the same.

(ii) Plastic washer : The plastic washer has been manufactured as parts of toys and has been supplied along with the plastic eyes, nose and heart. The Department has accepted the classification under 9503.70 as parts of the toys, the washers fit into the same. It cannot be classified under a different inappropriate chapter heading. The claim for classification as parts of toys is accepted and its classification is held under sub-heading 9503.70.

(c) Rubber parts viz., half face masks hair masks : The classification of this item has been accepted as parts of toys while the Department has held that it requires licence and confiscated the same. The reason does not appear to be correct. Once it has been accepted as parts of toys and toys does not require licence then the finding entered into by the authorities that it requires licence as it can be used, as an independent item is not a correct finding.

There is no dispute that appellant are manufacturers of toys, and these are imported specifically for manufacture of toys. The rubber face masks and hair mask are fitted to the toys, therefore the same being parts of toys do not require licence as they are not consumer goods. Hence, the finding recorded that it requires licence is set aside.

(d) Skull mask : The Department has taken the same view that it requires licence although it accepts its classification as parts of toys. In view of our above finding given in respect of item rubber parts viz. half face masks and hair mask, this item also has to be treated as one which does not require licence and it is held to be classified under 9503.70.

(e) Dynasaurs ; The party does not dispute the item to be a consumer item requiring licence. Hence, the finding on this issue is confirmed.

Redemption fine : In view of our findings recorded, in respect of valuation being in favour of the party in respect of item fur cloth and equally giving findings in favour of the party in respect of items (b), (c) and (d) we have to hold that the redemption fine imposed to an extent of Rs. 1 lakh is not correct. The redemption fine is leviable only on the item 'dynasaurs', which has to be worked out by the Department. Therefore, with regard to redemption fine the matter is remitted back to the Original authority to re-determine the same only with regard to 'dinosaurs' after taking the profit margin and other aspects pertaining to imposing redemption fine on this item.

Penalty : There is a penalty imposed on the Directors to an extent of Rs. 40,000/- on Shri M.B. Gulab and Rs. 5,000/- on Smt. Sheila Budrani. We find that there is no under valuation of goods in importing fur. The Department has accepted its classification. The appellants have not been charged for mis-declaration of the item in the bill of entry. There is no other allegation against the Directors of evading duty in any manner. Therefore, the imposition of penalty on these Directors is not justified. Therefore the penalties are set aside.