

Wrights Pulls and Lifts Vs. C.C.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-20-2004

Reported in : (2004)(174)ELT252Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Wrights Pulls and Lifts

Respondent : C.C.

Judgement :

a) Appellants are engaged in the business of Ship chandelling and Lifting accessories. They import POLYESTER WEBBING SLINGS (herein after referred to as Webbing Slings) and Polyester Round slings (herein after referred to as Round slings). The goods are sold, to users of cranes and other connected products, to enable lifting of heavy weight cargo using such slings. The interalie imported was 1328 pcs of 'WEBBING SLINGS', a BE was filed on 2.3.98 seeking the same to be classified under heading 5911.90 and cleared without a licenses. Revenue classified the same under 6307.90 and demanded a licence, since imports of goods under 6307.90 were restricted. A fine of Rs. 4,00,000/- in lieu of confiscation and penalty of Rs. 1.5 lakhs was imposed. In appeal the CC (Appeal) confirmed the order reducing the penalty to Rs. 1 lakhs observing the appellants did not contest the classification and order on ROUND SLINGS. b) Two such consignment imported earlier on 6/6/97 and 24/9/97 had also met the same fate.

c) The entity under classification dispute are found from the Catalogues produced and the findings of the lower authorities and to be - "Made up of Polyester and woven into a fabric, specially designed by stitching at the two ends and a hollow made to fix in the hooks of a crane lift. The Catalogue shows different safety factor loads up to 3000 kg in different sizes. They are made of Polyester Webbing.

While "Webbing" is known as "A narrow fabric the price fluctuation of which is load bearing, generally with multiple plies (main use of such slings is for lifting heavy loads). " The above established nature of entity, it can safely be concluded that it is not a consumer item satisfying a basic Human Need. It is a technological need satisfying product. It is more in the nature of an accessory to a crane, if not a part thereof. It can be used only in conjunction with a machine for lifting heavy cargo.

d) Examining the claim of the importer for classification under 59.11, it is found Chapter note 5 (a) (VII) to chapter 59 in HSN reads as "Cords, braids and like, whether or not coated; impregnated or reinforced with metal, of a Commonly used in machinery or plant as packing or lubricating material. " Will not cover the entity, which is used in machines for lifting.

However, note 5(b) which reads as - (b) Textile articles (other than the heading no, 59.14 to 59.16) of a kind commonly used in machinery or plant (for example, gaskets, washers, polishing discs and other machinery parts) " .

Would also not cover the entities by application of the ejus dem generes rule since the preceding entities would define the genus, which has nothing to do with 'lifting'. Classification under Chapter 59 is therefore ruled out.

e) Examining the other alternate classification under 56.07 would also not be applicable on reading the HSN note.

f) The order for the classification approved by lower authorities under 63.07.90 would be the appropriate classification for the goods on reading of the notes there under. Articles under that heading cannot be upheld without a licence. Confiscation liability is therefore upheld.² No reasons are therefore found to upset the classification as arrived by the lower authority. The appeal is devoid of merits

and is therefore to be dismissed.

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