Unipac Vs. Collector of Customs

Unipac Vs. Collector of Customs

SooperKanoon Citation : sooperkanoon.com/3684

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-20-1987

Reported in : (1989)(42)ELT242TriDel

Appellant : Unipac

Respondent : Collector of Customs

Judgement :
1. The appellants imported "Automatic Form Fill and Seal Machine for Flexible Packaging Materials with Gas flushing" for utilising in packing food products, (hereinafter referred to as FFS). The goods were assessed for customs duty under Heading 84.19 CTA. There is no dispute about the basic classification. The appellants however asked that the benefit of Notification No. 47/84 Cus. be extended to the imported goods.

2. The Assistant Collector rejected the request. He found that the imported goods were "Form", Fill and Seal Machines with sample device for gas flushing" and observed that "since the benefit of (the said) notification as claimed is available only for gas flushing packaging system, the Form, Fill and Seal machines imported cannot be extended the benefit under the said serial No. 7 of the notification. The benefit under serial No. 6 of the notification also cannot be extended since the machine imported is capable of only flushing and not vacuumising as required." 3. The appellants filed an appeal with Collector of Customs (Appeals).

He remanded the matter to the Assistant Collector who again held that the goods were not eligible to concessional assessment under Notification 47/84. He recorded that the machines as imported were primarily as F.F.S. with gas flushing facility only and such machines having been covered specifically under serial No. 6 of the notification, the eligibility of a machine which is F.F.S. has to be considered in conformity with that entry. Since only F.F.S. with both the facilities, namely, vacuumising and gas flushing is covered by serial No. 6, the imported machine being without vacuumising could not be covered by entry No. 6. He rejected the appeal holding that according to the wording of the Notification 47/84, it is clear that entry at serial No. 7 thereof claimed by the appellants covers gas flushing packaging system for flexible packages and does not cover F.F.S. imported by the appellants.

4. We heard Shri K.V. Kunhikrishnan, Consultant for the appellants and Shri D.K. Saha, JDR for the respondent. The question before us, simply, is whether or not the goods imported by the appellants were entitled to the benefit of the Notification 47/84. This notification issued under Section 25(1) of Customs Act, 1962 exempted partly from Customs Duty and wholly from Additional Duty the goods specified in table attached thereto. Item 6 of the table is F.F.S. with vacuumising and inert gas flushing and item 7 of the table is gas flushing packaging system for flexible packages.

5. It is the admitted position that there is no vacuumising in the subject machine under import. Therefore, serial No. 6 of the table is ruled out. The objection of the lower authorities for applying serial No. 7 to the imported goods was that this entry covers gas flush packaging systems for flexible packages and it does not cover the F.F.S. gas flushing machines which are under import. Admittedly, the machine is equipped with "simple device for gas flushing". Our perusal of the extracts of the catalogue shows that the imported machine is all automatic F.F.S. machines for flexible packaging with gas flush and it is intended to be used for packing food products. We do not see why it should not be called a packing system for flexible packaging. A system can be a group of machines for performing a single function or a machine designed for a number of functions. This machine obviously falls into the later category inasmuch as it can pack and adjust volume and seal besides

doing several other things. We, therefore, held that this can be a system. The plea of Shri D.K. Saha that the notification must be interpreted strictly is a correct proposition but when the notification refers to a "system" that word has to be given its logical and correct meaning. We held that in this case, no distinction need be made between 'System' and 'machine'.

6. In view of this discussion and on going through the literature and on consideration of the arguments we hold that as the imported FFS machines have gas flushing provision, they are a packaging system, charging the function of Forming, Filling and Sealing. It is obviously for flexible packaging only. Therefore, we hold that this machine is covered by serial No. 7 of the Notification No. 47/84-Cus. We, therefore, allow the appeal.