Marque Impex Vs. Commissioner of Customs (Exp.)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-15-2005

Reported in : (2005)(189)ELT459Tri(Mum.)bai

Judge : A Wadhwa, A M Moheb

Appellant : Marque Impex

Respondent : Commissioner of Customs (Exp.)

Judgement :

1. The dispute in the present appeal relates to the rate of drawback in respect of exports made by the appellants.

2. As per the facts on records, the appellants filed six shipping bills all dated 9-8-1999 for the export of "Handicraft of Brass Artware" with glass and wood fittings claiming duty drawback under Serial No.74.20(i) @ Rs. 6/- per kg. However, the revenue authorities on examination found that the consignment was of simple glass mirror backed with wooden pad and framed in simple brass frame. The goods were brass artware and properly fall under Serial No. 74.19(d) attracting Rs. 26/- per kg. as drawback. However, the consignment was allowed to be exported provisionally.

3. The dispute was adjudicated by the Commissioner vide his impugned order and by applying the ratio of the Hon'ble Supreme Court judgment in the case of Collector of Central Excise, New Delhi v. Louis Shoppe, he held that the goods

exported could not be considered as handicrafts so as to allo the higher drawback. It was specifically observed by the Commissioner that the exporters have not produced any certificate from the Board of Handicraft. The goods in question, on visual examination did not sho any special appeal in the nature of ornamentation or inlay work or some similar work lending it an element of artistic improvement. Accordingly, it was held that the goods were nothing but simple looking glass or mirrors with a back support of wood plank and in shape of rhombus or square with a metal brass frame. Accordingly, he allowed the drawback benefit under Serial No. 74.19 of the drawback rates. He also imposed personal penalty of Rs. 3.00 lakhs (Rupees three lakhs only) upon the appellants.

4. Ld. Advocate appearing for the appellants has drawn our attention to a certificate dated 28-2-2003 given by the Metal Handicrafts Service Centre. The said certificate is to the effect that the items produced before the Centre was to be specified as handicrafts of brassware.

However, we note that the said certificate is dated 28-2-2003 and the exports were made on 19-8-1999 and the impugned order was passed on 21-6-2000. The said certificate in question has been obtained after a period of three years from the date of passing of the order. There is also nothing in the said certificate so as to sho that the items produced before the said institution were out of the export consignment or they were identical. As such, the said certificate has to be rejected on this ground.

5. The appellants have not before the adjudicating authority, produced any other evidence to sho that the goods in question merited to be described as handicrafts artware. It is seen that the appellant's authorised representative, who appeared for personal hearing before the Commissioner accepted that the goods do not have any artistic quality or beauty to fit under the category of handicrafts artware. Hon'ble Supreme Court in the Louis Shoppe judgment referred (supra) has laid down twin criteria for any product to be called handicrafts, the same must be predominantly made by hand and must be graded with the visual appeal in the nature of ornamentation or inlay work or even some similar work lending it an element of artistic improvement. It was also held that such ornamentation must be

of a substantial nature and not a mere pretence. Nothing has been produced before us by the appellants to enable us to come to a conclusion that the above two criteria laid down by the Hon'ble Supreme Court stands specified. As such, we are of the vie that the appellant's claim has been rightly rejected by the Commissioner.

6. However, in any vie of the matter, we are of the opinion that the penalty imposed upon the appellants were not warranted, the appellants had declared the goods as handicrafts and if the revenue was not satisfied with the same, they were at liberty to ignore the appellant's claim and allo the drawback under other serial number. No penalty, in these circumstances is warranted, the same is accordingly set aside.

But for the above setting aside of the penalty amount, the appeal is otherwise rejected.