Commr. of Cus. (import) Vs. Unique Pharmaceuticals Labs.

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SooperKanoon Citation : sooperkanoon.com/39803

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-25-2005

Reported in : (2005)(190)ELT105Tri(Mum.)bai

Judge : K Kumar, S T Chittaranjan

Appellant : Commr. of Cus. (import)

Respondent : Unique Pharmaceuticals Labs.

Judgement :

1. Heard both sides. The adjudicating authority has confiscated the impugned goods but has allowed redemption of the same on a fine of Rs. 1,10,000/- and has also imposed a penalty of Rs. 25,000/-. His findings are as under:- "What has been imported is a bottle with cap and nozzle. As such it would merit classification under the heading of bottles. However, if only caps and nozzles were imported separately they would merit classification in other heading. It has been admitted by the importers that they would fill the bottle with nasal drops and fix caps and nozzles on the bottle. It is a common trade practice that the bottles are always sold with caps and on nozzles and they are called bottles only. As such I hold the bottles, caps and nozzles imported in equal quantities as bottles classifiable ITC HS 392330.00 and would require a specific licence for its clearance. In the absence of any specific licence forthcoming I hold the goods liable for confiscation under Section 3 of Foreign Trade (Development and Regulation) Act, 1992 r/w Section 111(d) of Customs Act, 1962. I also hold the importers liable for penal action under Section 112(a) of Customs Act, 62." The lower appellate authority

has set aside the order-in-original mainly on the ground that earlier similar goods were classified under sub-heading 3923.90. Hence this appeal by Revenue.

2. We have considered the relative tariff entries and the submissions made. It has been argued by the applicant Commissioner as follows:- "(i) In the present case the item under reference is a plastic bottle (main container), its caps and nozzles which are imported under one invoice though packed separately. In this case the major portion is a bottle and it requires cap and nozzle to become a complete bottle. Since all the parts are imported together, all the individual items have to be classified as bottle. Thus there is no alternative or option left with regard to its classification as the item as a whole has to be terms as a 'bottle' only.

(ii) Further, the goods merit classification under CTH 3923.30 as a unit of bottle and therefore by virtue of its classification attracts a Specific Import Licence as per ITC (HS) classification.

The absence of the requisite licence is treated as a contravention of the ITC provisions amounting to improper importation of the goods which is liable for action under Section 111(d) of the Customs Act, 1962." 3. We find merit in the submissions made by Revenue and hold that the impugned goods are correctly classifiable under sub-heading 3923.30 that includes "Carboys, bottles, flasks and similar articles" and not under the residual category under sub-heading 3923.90. As such, we set aside the impugned Order-in-Appeal and restore the order-in-original.

However, considering the past assessment practice we reduce the redemption fine to Rs. 50,000/- and set aside the penalty.