Collector of Customs Vs. Mysore Electrical Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-21-1988

Reported in : (1989)(43)ELT698TriDel

Appellant : Collector of Customs

Respondent : Mysore Electrical Industries

Judgement :

1. These four appeals involve a common issue, namely, whether tubes made out of vacuum impregnated glass cloth and reinforced with expoxy, imported by the respondents, were liable to be charged to additional duty of customs equivalent to the Central Exise Duty leviable under Item 22F of the Central Excise Tariff Schedule (CET for short). While the Asstt. Collector of Customs, Madras, held that additional duty of customs was chargeable, the Appellate Col- lector of Customs, Madras, thought otherwise. On perusal of the Appellate Collector's orders, the Central Government, for the reasons set out in its show cause notice (F. No. 380/110 and 123/81-Cus. II, dated 18-9-1981) issued to the respondents under Section 131(3) of the Customs Act (as it stood then) formed a tentative view that the Appellate Collector's orders were not correct in law. The reasons for this view were set out in the notice as follows :- "The Appellate Collector while relying on Section 3(3) of CTA 75 appears to have lost sight of another relevant Section 3(1) of CTA 75 whereby any article which is imported into India shall be liable to additional duty equal to Excise duty for the time being leviable to like articles if produced and manufactured in India. The item imported in these cases are tubes

and centre tubes of glass fibre meant for using in circuit breakers. Tariff Item 22F of CET appears to include 'manufactured articles such as glass fibre tubes, cylinders etc.' in as much as Sub-clause (iv) of the Explanation under Tariff Item 22F of CET makes it clear that the item 'manufactures containing mineral fibre and yarn other than asbestos cement products'. It therefore, appears that tubes of glass fibre which have been imported are clearly covered by Tariff Item 22F CET and as such by virtue of Section 3(1) of CTA 75, these became leviable to C. V. duty accordingly." These proceedings having been transferred to the Tribunal, are now before us as deemed appeals filed by the Collector of Customs, Madras.

2. We have heard Smt. Saxena, Sr. D.R. for the appellant Collector and Shri H.K. Murlidhara for the respondent and read the records.

3. Central Excise Notification No. 87/76, date 16-3-1976 exempts inter alia glass fabrics from the whole of the excise duty leviable thereon.

The respondent's con- tention, as urged before us, is that the notification applies even to expoxy coated glass fabrics whereas the Sr. D.R.'s contention is to the contrary. As the notification reads, the exemption is for glass fabrics. The question whether it would apply to the vacuum impregnated glass fabric, reinforced with expoxy, in our opinion, need not be gone into for the present dispute. This is because the goods herein are not mere fabrics but tubes made out of such fabrics to be used as finished components of circuit-breakers. In our opinion, the notification does not apply to the goods made out of glass fabrics. We may note here that there is no dispute before us that the subject tubes fell under Item No. 22FCET.4. In the above view of the matter, the appeals are allowed and the impugned orders-in-appeal set aside.