

Sonu Impex Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-16-1988

Reported in : (1989)(39)ELT292TriDel

Appellant : Sonu Impex

Respondent : Collector of Customs

Advocate for Pet/Ap. : Shri. J.S. Agarwal

Judgement :

1. The only question that fall for our consideration in the instant appeal are: (i) Whether the imported goods namely, Polypropylene Adhesive Coated Jumbo Rolls could be imported as packing material against product mentioned in Group 0.1 Appendix 17 of the Import and Export Policy, April, 1985 - March, 1988; and (ii) whether the imported goods merits the benefit of Exemption Notification No. 341-Cus., dated 2-8-1976 as amended.

2. Factual backdrop : M/s. Sonu Impex, Delhi - appellants herein filed their Bill of Entry dated 31-12-1986 for the clearance of Polypropylene Adhesive Coated Jumbo Rolls. The said Bill of Entry was subsequently allowed to be converted into Bill of Entry for LC.L on the request of the appellants. Accordingly the appellants submitted two REP licences and claimed clearance of the imported goods as "packing materials Polypropylene" allowed against product Group 0.1 of Appendix 17 of the Import Export Policy, April, 1985 - March, 1988 and also claimed the benefit of the exemption Notification No. 341-Cus., dated 2-8-1976 under Sr. No.

96 of the Table attached to the said Notification.

However the Customs Authorities did not allow the clearance on the ground that the imported goods fall under Appendix 2B of the said Policy and the appellants are not entitled for exemption under Notification No. 341/76, dated 2-8-1976 as amended. As a follow-up action a show cause notice calling upon the appellants to show cause as to why the imported goods be not confiscated and penalty be not imposed was issued. In reply the appellants inter-alia contended that the licence produced by them were valid for the import of subject goods against product Group 0.1 of Appendix 17 of Import Export Policy, 1985-1988 as the imported goods are "packing materials Polypropylene".

The appellants further stated that they are entitled for the benefit of exemption Notification No. 341-Cus. However the Additional Collector, Customs who adjudicated the case did not agree with the said defence of the appellants and consequently he after the usual adjudication proceedings ordered for the confiscation of the imported goods with an option to redeem the same on payment of a fine of Rs. 80,000/- and also imposed a nominal penalty of Rs. 1009/- holding that there is no evidence of mala fide on the part of the importers - appellants. Hence the instant appeal.

3. We have heard Shri J.S. Agarwal, learned counsel for the appellants and Shri LC. Chakarborty, learned JDR for the respondent.

4. As regards Question No. (i): - Shri J.S. Agarwal, learned counsel for the appellants submitted that the imported goods are covered under Group 0.1 of Appendix 17 of Import Export Policy, 1985-1988 and are covered under the term "Polypropylene" though coated with adhesive. He further submitted that it is not clear from the impugned order as to whether the Imported goods were held to be finished or semi-finished.

Even otherwise submitted the counsel the question as to whether the imported goods were finished or semi-finished has no relevancy in view of Para 20(8) of the said Import and Export Policy which provides "Items appearing in Appendices refer to finished items; in all such cases the relevant policy would apply to semi-finished

material as well. In a few cases however the entry specifically refers to rough or proof - machined material; this would include semi-finished items as well". In the process he submitted that the goods imported are not tapes but Jumbo Rolls out of which Tapes are to be manufactured for the manufacture of which the appellants are registered as a SSI unit. In nutshell he submitted that the goods imported are covered under Appendix 17 - Group 0.1, where these Jumbo Rolls which are in Sheets are covered under the term 'Polypropylene' - which is not only for goods in Primary form but it includes Powder, Sheets, Films, Yarns, Fibres etc. He also relying upon the decision rendered in the case of Kantlal Sud v. Paranithi Sadhukhan, -AIR 1957 S.C. 907 and also in Sociedade De Fomento v. Collector of Customs, Bombay -1987 (29) ELT 620 (Tribunal) submitted that in Taxing Statutes there is no room for in-tendent. There is no equity about the tax. Nothing is to be read in.

Nothing is to be implied. One can only look fairly at the language used. Shri Agarwal further contended that on previous occasions similar goods were allowed to be Imported against similar licence and therefore the imported goods should have been allowed in the instant case also and to support his contention he cited the decisions rendered in the case of Basant Industries v. Collector of Customs, 1987 (29) ELT 155 (Tri.); Jain Exports Pvt. Ltd. v. Collector of Customs - 1988 (33) ELT 199 and In Re; S.S. Kothari, 1987 (30) ELT 156. In reply Shri L Chakarborty, learned JDR while supporting the impugned order submitted that the imported goods were covered under Sr. No. 84 'Self Adhesive Tapes of all types' of Appendix 2 Part B of Import and Export Policy, 1985-1988. He further submitted that sub-para (c) of Group 0.1 of Appendix 17 of the Import Export Policy, 1985-1988 against which the appellants claimed the clearance of imported goods does not permit the import of Self Adhesive Coated Jumbo Rolls of Polypropylene.

5. We have considered the arguments and the case law cited by the appellants. Sub-para (c) of Column 4 of Group 0.1 of Appendix 17 of the Import Export Policy, 1985-1988 against which the appellants claimed clearance of the imported goods reads as follows :- "(c) Packing materials, namely Polyethylene Moulding Powder/Printed Polypropylene Bags and Polypropylene".

"Polypropylene - Adhesive Coated Jumbo Rolls, thickness 35 x 40 Microm; width 770 mm and length x 1300 Meters." 6. From the impugned order it appears that during the personal hearing the appellants had stated that the imported goods were actually Self Adhesive Polypropylene Films, Sheets of 770 mm width and Self Adhesive Tapes of various widths will be made out of these Jumbo Rolls by applying the process of slitting and rewinding the slitted films on paper cones. From the admitted facts the Additional Collector concluded that the goods imported were manufactured products. For ready reference his findings may be extracted as below :- "The importer has sought clearance of the imported goods i.e. self adhesive coated jumbo rolls of polypropylene, as a "packing material polypropylene" allowed against product group 0.1 of Appendix 17.

These are actually self-adhesive polypropylene films/sheets of 770 mm width. As stated by the importer during the personal hearing, self adhesive tape of various widths would be made out of these jumbo rolls by applying the process of slitting and rewinding the slitted films on paper cones. In other words, the jumbo rolls are a manufactured product. Further, the article is not a mere sheet or film of polypropylene, but this film/sheet has been subjected to the further process of coating adhesive. The above facts indicate that though not a finished article ready for use i.e. self adhesive tapes, jumbo roll of self adhesive polypropylene film/sheet is a manufactured product, though meant for further operation.

The relevant entry under Product Group 0.1 allows, among others, "Polypropylene". As per the dictionary meaning, polypropylene is a polymer of propylene. Therefore, in the absence of any qualification in the relevant entry, the above description would denote polypropylene in its basic or primary form only. The argument of the Importer that in terms of Hawley's Dictionary, all forms like powder, sheets, films, filament yarn and fibre fall within the description "polypropylene" would imply that there is no need to distinguish between these items for the purpose of Import Policy - a proposition which is contrary to the intention of the policy. In fact different provisions have been laid down in the policy for the different categories of polymerised products. As regards the party's contention in respect of the description "polythelene moulding power" against Product Group 0.1, it may be pointed out that this description only indicates that

polythelene in its specified primary form i.e. "moulding powder" is allowed for import and In no other primary form. As against this, polypropylene in all its primary forms like powder, granules, flakes etc. would be allowed. The position remains that no manufactured articles like films/sheets, (whether or not coated with adhesive) would be permitted for import against this entry. It is also noted that the only manufactured article of polypropylene which has been allowed against Product Group 0.1 (which is incidentally a finished article) is printed polypropylene bag. This only makes it abundantly clear that no other manufactured article of polypropylene is covered by the relevant entry against product Group 0.1. (The party's contention that the coating of (Polypropylene) sheets with adhesiva does not take them out of the category of sheets, is also not correct, inasmuch as even in the Tariff self adhesive sheets/films etc. of plastics have been classified separately from the plain sheets/films etc. of plastics to which the subject goods do not belong). In view of the above, I hold that the licences relied upon by the importers in respect of the Imported goods are not valid to cover the latter. For the purpose of Import, a specific licence would be required. No such licence is available.

As indicated above, the imported goods i.e. Jumbo rolls of self adhesive polypropylene films/sheets are not self-adhesive tapes as such, since the latter are made out of the former. However in terms of para 20(8) of Import Policy 1985-88, items appearing in Appendices would apply to semi-finished materials also. There is no doubt that jumbo rolls of self adhesive polypropylene films/sheets are semifinished articles, the finished products i.e. self adhesive tapes, being made out of the jumbo rolls by mere slitting and rewinding. Self-adhesive tapes of all types are included in Appendix 2 part 'B' (under Serial No. 84) relating to restricted items. The imported jumbo rolls of self adhesive polypropylene sheets are covered by this entry by virtue of para 20(8) mentioned above. For clearance of the goods, a specific licence would be required.

However, no such licence is also available.

Considering the above facts I hold that importation of jumbo rolls of self-adhesive polypropylene films/sheets is unauthorised." We see no reason to differ with the

findings recorded by the Additional Collector. As regards the contention that on previous occasions such goods were allowed to be imported against similar licence we find from the impugned order that the same plea was advanced before the Additional Collector also but he rejected the same holding that the factor and circumstances that prevailed upon the assessing officer on the previous occasion in releasing such goods were not on record.

During the pendency of appeal the appellant filed the copy of Bill of Entry and photo-copy of Annexure 'H' to show that on the previous occasion similar goods were cleared. As stated above the same was not before the Additional Collector who adjudicated the case. We also do not know the circumstances under which the said Bill of Entry was cleared and what factors and circumstances prevailed upon the assessing authority in releasing such goods.

7. Hence we answer Question No. (i) in the negative and hold that the importation of subject goods was unauthorised.

8. As regards Question No. (ii): Shri J.S. Agarwal submitted that the learned Additional Collector erred in denying the benefit of Notification No. 341/76-Cus., dated 2-8-1976 on the flimsy ground that all the articles specified in Item Nos. 1 to 11 are finished products ready for use of consumers and therefore the articles intended to be covered by Item No. 12 which reads as 'Others' would also be 'finished articles ready for use'. In reply Shri L.C. Chakarborty, JDR supported the Impugned order.

9. We have considered the arguments. Sr. No. 96 of the Table attached to the Notification No. 341/76-Cus., dated 2-8-1976 reads as follows:-

TABLE-----	Sl.	No.
Description of goods Chapter/Heading No. in the First Schedule to the-----	(1)	(2)
(3)-----	96	Articles made of artificial resin, plastic materials, 39 cellulose esters and ethers: It is admitted by both the parties that the imported goods are plastic materials. Item No. 12 is a residuary item. There is nothing in the Notification to show that for claiming the benefit articles made of plastic materials must be 'finished articles'. The reasoning

of the Additional Collector (Customs) that if the intention were to include all products of plastic there would not have been the need to specify only certain categories of finished articles ready for use" is not at all convincing. It is settled law that there is no room for intendment while interpreting the Notification. As such we hold that the appellant is entitled for the benefit of the exemption Notification. Consequently the imported goods are liable to be assessed after giving benefit of Notification No. 341/76-Cus., dated 2-8-1976 as amended. Thus we answer this question in affirmative.

10. In the result the confiscation of the imported goods is upheld but keeping in view the fact that there was no malafide intention on the part of the appellants we reduce the amount of redemption fine to Rs. 50,000/- (Rupees Fifty Thousand). The penalty amount of Rs. 1000/- imposed upon the appellant is also confirmed being a nominal one.

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