Commissioner of C. Ex. and Cus. Vs. Ankit Pulps and Boards Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-05-2006

Judge : A Wadhwa, V T M.

Appellant : Commissioner of C. Ex. and Cus.

Respondent : Ankit Pulps and Boards Pvt. Ltd.

Judgement :
1. Heard both sides on stay petition. After hearing for sometime, it was felt possible to decide the appeal itself and with the consent of both sides we proceed to do so.

2. This is an appeal by the department against the order of the Commissioner (Appeals) vide No. SVS/229/NGP-ICD/2006 dated 20-7-2006.

3. The respondent imported goods declared as "Stock Lot Bleached Hardwood Fluff and Softwood pulp" and filed Bill of Entry accordingly.

During examination, the goods were found to be other than declared and consisted of goods such as Non-wovens, Non-woven fabric, Non-woven fabric Grade 256, Retainer cloth etc. The Wood Pulp falling under Chapter sub-heading 4702.00.00 is assessable to Customs duty @ 5% ad valorem (BCD) and 2% Education Cess. Whereas the imported goods are assessable @ 15% ad valorem (BCD) and 16% CVD, Cess @ 2% and Educational Cess @ 2%.

4. During the course of investigation and before issue of show cause notice by their letter dated 7-2-2006, the respondents intimated that they are abandoning the goods.

5. The Additional Commissioner vide his order dated 24-4-2006 reclassified the goods, rejected the value declared, demanded differential customs duty of Rs. 1,67,681/- only and also ordered for confiscation of the goods with an option to redeem the same on payment of fine of Rs. 34,000/-. He also imposed penalty of Rs. 10,000/- on the importer.

6. The Commissioner (Appeals), however, allowed the request for abandonment of the goods imported by the appellant and, therefore, held that no action for demand of duty can be initiated, no penalty was imposable as importer was not found wanting on his part.

7. The department's appeal is on the ground that importer had knowledge about the material difference in declared quantity as well as quantity of the imported goods. The abandonment under Section 23(2) can be applied only in any bona fide case, where the importer relinquishes the imported goods in the normal course of business. The department seeks restoration of the order of the Additional Commissioner.

The owner of any imported goods may at any time before an order for clearance of the goods for home consumption under Section 47 of an order for permitting the deposit of goods in a warehouse under Section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.

9. The right of the importer to abandon the goods at any time before the order for clearances of the goods for home consumption under Section 47 is unconditional. Therefore, the Commissioner's (Appeals) decision in permitting the abandonment and setting aside the demand is legal. Even in cases where the goods are held liable for confiscation and redemption is offered on payment of fine and if a importer does not choose to exercise the option, naturally the ownership of the goods rest with the Central Government and the question of demanding duty will not arise.

10. Even after abandoning, if there was evidence of fraud on the part of the importer in relation to import of the goods, the penal action can be considered notwithstanding the fact of the abandonment of the goods. However, in this case, no evidence on the part of the importer about the knowledge that the goods were different from what was declared by the importer and intention to evade payment of duty has been brought out.

11. The learned Advocate for the respondents submitted that it was the case of wrong supply and they have initiated the proceedings against supplier for recovery of their money paid through Letter of Credit. The decision of the Commissioner (Appeals) in setting aside the penalty of Rs. 10,000/- also cannot be faulted.

12. The department's appeal is, accordingly, rejected. Stay petition is also disposed off accordingly.