

Trident Agencies Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-01-1988

Reported in : (1990)(45)ELT116Tri(Mum.)bai

Appellant : Trident Agencies

Respondent : Collector of Customs

Judgement :

1. This appeal arises out of and is directed against the order-in-appeal bearing No. S/49-48/83-L, dated 30-9-1983 passed by the Collector of Customs (Appeals), Bombay.

2. The undisputed facts are - that the appellants imported in all 12 drums of Vitamin AD3 B3 K3 and presented 6 Bills of entry and sought clearance against the additional licence issued to the Export Houses.

The Customs, however, objected to the clearance on the ground that the goods imported are canalised items and only the canalising agency was eligible to import. The Asstt. Collector of Customs who held the adjudication ordered confiscation but allowed redemption on payment of fine of Rs. 36,000/- in lieu of confiscation. On appeal, the Collector (Appeals) confirmed the order of the Asstt. Collector. Hence this appeal.

3. During the hearing of this appeal, Shri Patel firstly submitted that what had been canalised under Appendix-9 of the Policy AM-83 were the drugs and not any

substance containing drugs. There was no finding either by the Asstt. Collector or by the Collector (Appeals) that the goods imported were drugs. On the other hand both the authorities proceeded on the footing that even if they were not drugs since they specifically appeared in the canalised list they are to be considered as canalised item.

4. The second submission of Shri Patel was that for the purpose of collection of duty the Customs authorities have imposed additional customs duty (CVD). This again clearly indicates that the goods imported are not drugs. The drugs according to Shri Patel were exempted from payment of CVD as per Notification No. 234/82-C.E., dated 1-11-1982. The third submission of Shri Patel was that import of similar items by other importers have been allowed by the Customs without raising any objection. In support of his contention Shri Patel produced several copies of Bills of entry. The fourth submission of Shri Patel was that the State Trading Corporation had clarified that they are not importing the goods in question as they were de-canalised.

The fifth submission of Shri Patel was that for the manufacture of the goods in question in India no drug licence is required. If the goods are drugs then a licence would be necessary to manufacture in India.

He, therefore, prayed that the orders of the authorities below may be set aside.

5. Shri Prabhu, appearing for the Collector, however, supported the orders passed by the authorities below. He, contended that admittedly the goods imported specifically appeared at Sl. No. 17 of Appendix 9(3) of the Policy AM-83. In view of that both the authorities below were justified in taking the view that the goods imported are canalised items. The further submission of Shri Patel was that the items appearing in Appendix 9(3) need not necessarily be the drugs and in that connection Shri Prabhu placed reliance at Sl. No. 6 which according to Shri Prabhu is not a drug. Shri Prabhu also pointed out that the petroleum products were canalised. In that connection Shri Prabhu placed reliance at Sl. Nos. 11 and 24 of Appendix 9(1). It was also the submission of Shri Prabhu that the Bills of entry indicates that the drugs imported are of pharmaceutical grade. The examination report relied on by the other side did not state that it was not of

pharmaceutical grade, but the importers are only asked to indicate on the drums that they are food grade not for medicinal use. Shri Prabhu finally submitted that the fine imposed works out to 20% of the c.i.f.

value and therefore it does not require any interference.

6. I have carefully considered the submissions made on both the sides, and perused the available records. The entry 3(17) of Appendix 9 reads :- The invoice description of 4 drums was Vitamin A D3 B2 & K3. The invoice description of 2 drums was Vitamin E50% food grade. Similarly is the invoice description of the other 2 drums. The invoice description is copied out in the bills of entry. It appears that the goods were examined before the clearance. The examination report does not indicate that the goods imported were drugs. On the other hand, the Asstt. Drugs Controller appears to have endorsed on the reverse side of the Bills of entry in respect of 4 drums to the effect that the importers are permitted to mention on all the drums that the drugs are of food grade and not for medicinal use.

7. Sl. Nos. 1 to 17 under the main heading 3 of Appendix 9 fall under the category "drugs". The heading of Appendix 9 itself indicate that the canalised items are petroleum products, fertilisers, drugs, feature films, oils/seeds, cement and newsprint. Therefore, to hold that the goods in question are canalised they should first qualify as drugs.

Both the authorities viz. the Asstt. Collector as well as the Collector (Appeals) have proceeded on the footing that it is not necessary that the goods should qualify as drugs. According to them, irrespective of the goods being drugs or not they are canalised as they appear specifically at Sl. No. 17. From the invoice description, it cannot be said that what was imported was either Vitamin A or Vitamin B2 or Vitamin K-3. It appears to be mixture of all three. The mixture of Vitamin A-B2 and K3 did not specifically appear in S. No. 17 of Appendix 9(3). The pre-mix contemplated therein is that of Vitamin A only.

8. During the Policy AM'84 the canalising agency for import of drugs was STC. In respect of another importer the STC has clarified by their letter dated 10-5-1983 that Vitamin AD3 premix and Vitamin A Gelt on are the decanalised items and they

are not importing the same. It is true that the appellants have not produced the copy of the letter addressed to the STC so as to know the nature of the clarification sought by them. From the expression used by the STC viz. "de-canalissd" it would mean that it was earlier canalised but later on de-canalised.

But then, it was not the contention of the department that premix AD3 Vitamin and Vitamin A was at any time canalised. Therefore, much value cannot be given to the STC's letter. But all the same, since the canalising agency clarified that AD3 premix are not being imported by them the inference to be drawn is that it is not canalised during the Policy AM-84. Shri Patel has contended that there had been no change in the Policy with regard to the canalisation of drugs in AM-84. The Policy according to him was the same during AM-83 as well as AM-84.

There is also some force in the contention of Shri Patel that for the purpose of Customs duty the Customs have charged additional customs duty. If the goods imported are drugs no additional customs duty should have been levied or collected since the drugs are exempted from payment of additional customs duty. Above all, the subsequent conduct of the Customs House in clearing the identical goods without raising any objection again support the importers' contention that the goods imported by them are not drugs and were not canalised during the Policy AM-83. It is not in a single instance the objection was not taken. It was in respect of series of imports. Having regard to the course of conduct of the Customs, even if the goods are treated as canalised item there was no justification to impose any fine.

9. On consideration of all aspects, I allow this appeal, set aside the confiscation consequently the fine levied in lieu of confiscation. The appellants be granted consequential relief.

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