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Craftway Engineers Ltd. Vs. Cc(i)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-03-2007

Judge : J Balasundaram, Vice, A T K.K.

Appellant : Craftway Engineers Ltd.

Respondent : Cc(i)

Judgement :
1 These are application for waiver or pre-deposit of duty amounting to Rs. 14,88,639/- on components and parts of motor boats and Rs. 36,02,554/- in respect of two boats cleared from the warehouse by M/s.

Craftway Engineers Limited along with interest and imposition of penalties Rs. 5 lakhs on M/s. Craftway Engineers Limited and Rs. 1 lakh on Shri Harminder Singh Patheja, CMD of the applicants.

2. The facts of the case are that as a result of certain investigation it came to notice that the appellants imported components and parts declaring them as "ship components and parts thereof" and sought benefit of duty exemption vide Sr.No. 356 of Customs Notification 21 of 2002-Cus, dated 01.03.2002, which exempts raw materials and parts, for use in the manufacture of goods falling under headings 8902, 8904, 8905 (except subheading 8905.20) or 8906 in accordance with the provisions of Section 65 of the Customs Act, 1962. It was further noticed, that these raw materials and parts were used in the manufacture of motor boats which are classifiable under heading 8903 and not under heading 8906 as claimed

by the applicants and therefore the exemption was wrongly availed by the applicant. It was further noticed that two boats manufactured out of components referred to above were cleared without filing any Ex-Bond Bills of Entry and without payment of duty. A show cause notice to this effect was issued and adjudicated by the Commissioner who confirmed the duties and imposed penalties as detailed above.

3. The learned Advocate for the applicants submits that Maharashtra Police has placed an order for purchase of High Speed FRP patrolling Boats which were required by them for patrolling sea coast. They are rightly classifiable under chapter heading 8906 which refers to "other vessels including warships and life boats other than rowing boats". In this regard he invited our attention to the HSN notes relating to Chapter heading 8906 where ships having certain characteristics of warship but which are used by public authorities (e.g. Customs and Police) have been held to be covered by chapter heading 8906. It was submitted that the boats in question were meant for patrolling by the Police department and was meant for carrying arms and ammunition as has been certified by the DG Police Office vide their letter dated 20.5.2005. In view of this, they were exempted from duty as per Notification No. 21/2002 and accordingly there was no requirement of payment of duty.

4. As regards the boats cleared by them it was submitted that ever it is held that the boats falling under chapter heading 8903 are chargeable to duty, duty payable would be the Central Excise duty and not the Customs duty as has been confirmed by the Commissioner.

5. The learned SDR opposes the prayer and states that High Speed FRP Patrolling Boats in question did not have any attribute of warship and were in fact plain motor boat which is rightly classifiable under heading 8903. He invited our attention to the tender floated by the Police department laying down the specifications of the boat none of which shows that it has any special fitting having characteristic of a warship. He refers to the feeble plea of the applicants that there was requirement of making two cabinets for placing wireless set and states, that firstly this document does not appear to be part of the tender and secondly even

assuming that it was a part of tender, it cannot be considered as a attribute of warship, as wireless sets are needed by motor boats for the purpose of navigating. In view of this vessels manufactured by the applicant are rightly classifiable under heading 8903 and therefore not eligible for exemption under Notification No.21/2002. As regards payment of duty on vessels cleared from the warehouse, it was submitted that since the goods were warehoused, as per provisions of Section 72 or Customs Act, 1962, duty was payable at the time of clearance and the same was rightly demanded.

5. We have considered the submissions. We find that as per specifications given in the tender floated by the Police department, the motor boat is not required to be fitted with any special fitting having attributes of a warship simply because it is used for patrolling by Police department, it cannot prima facie be said that it is in the nature of warship or vessels having attribute of warship and therefore, we hold that the applicants have not been able to make out a prima facie case in their favour so far as duty on parts and components is concerned. As regards duty on vessels manufactured out of components, we prima facie find merit in the applicants' contention that since the vessel has been manufactured within India out of imported and indigenous raw materials, they were required to pay Central Excise duty and not the Customs duty and the provisions of Section 72 of Customs Act, 1962 will be applicable where the warehoused goods are cleared as such. In view of this, we direct a pre-deposit of Rs. 5 lakhs out of duty of Rs. 14,88,639/- relating to parte and components within eight weeks from today and on such deposit there shall be stay of recovery of balance amount of duty both in respect of parts and motor boats cleared and penalty imposed till the disposal of the appeals.

7. Failure to comply with this direction shall result in vacation of stay and dismissal of appeal without any further notice.

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