

Cc (imp) Vs. Mountmine Impex Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-04-2007

Reported in : (2007)(118)ECC407

Judge : M Ravindran, A T K.K.

Appellant : Cc (imp)

Respondent : Mountmine Impex Pvt. Ltd.

Judgement :

1. After hearing both sides on Revenue's prayer for staying the operation of the order of the Commissioner (Appeals) or some time, we feel that the appeal itself can be disposed off, at this stage.

Therefore, after granting stay, we proceed to decide the appeal itself.

2. The facts of the case are that the respondents have imported a consignment of 'Steel Shots' and classified the same under Chapter Heading 73259920, as articles of alloy of steel. The Bill of Entry was assessed as per the declaration made by them and the assessed duty was paid by the respondents. Subsequently, the applicant filed an appeal to the Commissioner (Appeals) stating that the imported goods being steel shots are correctly classifiable under heading 72051021, which is chargeable to lower rate of duty and that they are also eligible to benefit of Notification No. 21/2002 (Sr. No. 190 B). The claim was accepted by the Commissioner (Appeals), who allowed the appeal and remitted the matter

back to the lower authority asking him to re-assess the Bill of Entry under Chapter Heading 72051021 as claimed by the respondents 3. It is the Revenue's contention that once the goods were cleared, the Commissioner (Appeals) could not have re-classified the goods without examining the same and the goods have to conform to the definition of granules given in Chapter Note 1(h) to Chapter 72. He has allowed the exemption without satisfying himself whether the conditions of the Notification are fulfilled or not. It was, accordingly, pleaded that the impugned order should be set aside and the classification should not be allowed to be changed.

4. The respondents, however, plead that the declaration made by them in their Bill of Entry was erroneous and made inadvertently and once they realized the mistake they filed an appeal before the Commissioner (Appeals) and if the customs has not considered it necessary to examine the goods, the classification arrived by it cannot be challenged.

5. On hearing both sides and perusal of the case records, we find that the Commissioner has changed the classification without looking into the nature of the goods, neither the order show about any documents justifying the classification under the claimed heading nor any reasons have been given for allowing the exemption. The respondents plead that they have the documents which they have received from the supplier to show that the imported consignment was that of granules only.

6. We have considered the submission. We see merit in Revenue's contention that for re-classifying the goods Commissioner (Appeals) should have examined the goods or at least look into the document to satisfy himself that the goods actually imported meet the requirements of note 1(h) of Chapter 72 and that the conditions of exemption notification are satisfied. We, therefore, remand the matter back to the original authority to determine the classification of the goods after affording a reasonable opportunity of hearing to the respondents and looking into the documents, which the appellant may like to furnish in their support and thereafter to pass a fresh order as per law.