

international Traders Vs. Cc

international Traders Vs. Cc

SooperKanoon Citation : sooperkanoon.com/45273

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-05-2007

Reported in : (2007)(118)ECC321

Judge : S Kang, Vice, N T C.N.B.

Appellant : international Traders

Respondent : Cc

Judgement :

1. The appellant M/s International Traders, Delhi imported two consignments declared as lovage at Bombay and filed Bill of Entry No.16016 dated 11.5.99 and Bill of Entry No. 16043 dated 27.5.99 seeking clearance of the consignments. The Customs Tariff classification claimed was Entry No. 1211.90, a subheading under Heading No. 12.11, which reads as under: 12.11 Plants and parts of plants (including seeds and fruits) of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purpose, fresh or dried, whether or not cut, crushed or powdered.

2. The appellant also produced invoice describing the consignments as Lovage from M/s Mustafa Enterprises, Karachi. Since the import of Lovage from SAARC countries was exempt from import licencing, the appellant produced 'SAARC Preferential Trading Arrangement (Sapta) certificate' dated 16th April 1999 from the Export Promotion Bureau, Ministry of Commerce, Government of Pakistan.

3. Upon examining the consignment, Custom authorities took a view that the goods were 'Ajwain seeds' and not Lovage. The import of Ajwain seeds required specific licence and there was no exemption from licensing in regard to SAARC countries also.

4. Based on the examination report Custom authorities proposed to confiscate the goods, classify the consignments under Sub-heading No.091099 which heading is for Ginger, Saffron, Turmeric (Curcuma), thyme, bay leaves, curry and other spices. It also proposed to increase the assessable value to US \$ 545 PMT as against the Import price of US \$ 5. In adjudication, the consignments were confiscated with opportunity to redeem on payment of fine. Assessment of the goods under Heading 091099 at the higher value was also ordered.

6. The appellant filed appeal before Commissioner (Appeals) and that appeal was rejected with the following findings: I have carefully gone through the case records and the submissions of the Appellant. The Appellant did not appear for Personal Hearing in spite of granting opportunities on 27.7.2000, 25.8.2000, 25.3.2004, 7.6.2004, 17.6.2004, 5.7.2004, 16.7.2004, 30.7.2004, 11.8.2004 & 25.8.2004 (10 occasions).

The issue here is whether goods are classifiable under CTH 0910.99 or CTH 1211.90. The ITC (HS) Classification EXIM Policy 1997-2002 classifies Ajwain seeds under CTH 0910.09 and Lovage under CTH 1211.90. The Appellant is of the opinion that Lovage and Ajwain seeds are one and the same while the department's view is that they are separate items. In this regard, I agree with the opinion of the department that these two items are separate items and merits classification under the headings indicated by the department. Since the ITC (HS) Classification categorically classifies Ajwain seeds under CTH 0910.09 and Lovage under 1211.90, the same would merit classification in the above headings. Since the comparison of samples of identical goods indicated it to be Ajwain seeds. I agree with the order of the lower authority to classify the same under CTH 0910.09. Regarding value, it is seen that the department has compared the impugned goods with contemporaneous imports which shows the unit price as US\$ 545 PMT. While the Appellant is contesting the quality of the

contemporaneous import, he has not produced any evidence to prove that the impugned goods were of inferior quality and hence, of lower value. I, therefore, agree with the enhancement of value to US\$ 545 PMT. Also, since the goods were mis-declared in respect of classification and value. I find the confiscation of the impugned goods and the imposition of penalty to be perfectly legal.

In view of the above findings and submissions. I reject the appeal and uphold the order of the Lower Authority.

7. The contention of the Id. Counsel for the appellant is that the consignments under import were actually of Lovage and was disposed of after Customs clearance as Lovage. Reliance is being placed on the SAARC certificate and other documents covering the supply. The appellant would point out that the order is the result of confusion as to whether Lovage and Ajwain are the same and the department is passing conflicting orders. The Id. Counsel would contend that even in such a case, the appellant should be allowed the benefit of clearance in terms of SAARC agreement, as Lovage imported from Pakistan is eligible for licence free import.

8. On valuation, the contention of the appellant is that Rule 4 of the Custom Valuation Rules specifically provides for assessment based on transaction value and in the present case, since there is no evidence that the transaction value had been mis-declared in the sale documents, the sale price should have been accepted. The counsel would also point out that in regard to valuation also, the Custom authorities have been inconsistent. Reliance in this connection is placed on the decision of the Tribunal in the case of J.K. Imports v. CC, Mumbai 2004 (116) ECR 476 (Tri.-Delhi) wherein the Tribunal accepted assessment at the transaction value upon nothing that Lovage consignments were being cleared at the same time at transaction values which were in the range 400-415 US \$ PMT. He would also point out that in the case of J.K.Imports the Commissioner (Appeals) had held that Lovage and Ajwain are the same.

9. The Id. SDR would point out that the original authority had compared the samples from four importers including that of the appellant. They were of M/s J.K. Imports (subject of the aforesaid order of the Tribunal), Maxo Lab Pvt. Ltd., J.K. &

Co. and the appellant. The Id.SDR would emphasize that it was the finding of the original authority that sample of goods imported by all the parties showed that the goods were identical and that in the case of Maxo Lab (P) Ltd. the supplier himself had described the goods as Ajwain seeds. The contention of the Id. SDR is that this finding has gone unchallenged by the appellant and, therefore, the consignment under import should be treated as imports of Ajwain seeds only.

10. Much literature have been produced by both the sides and Id. SDR would point out from an article on Lovage (spice) - states "but the fruits are not traded)". It is also being pointed out that seeds and fruits of Lovage are treated as identical. The contention of the Id.SDR is that since Lovage seeds are not traded, the present consignment which is of seeds should be treated as only seeds of Ajwain.

11. Another point emphasized by the Id. SDR is that Lovage is grown only in European countries and, therefore, the consignment cannot be treated as of Pakistani origin. Therefore, these consignments coming from Pakistan can be treated as Ajwain only, which is grown in India and Pakistan.

12. The Id. SDR also would rely upon the judgment of the Supreme Court in the case of CCE, Raipur v. Steel Authority of India Ltd. 2006 (76) RLT 6 (SC) in support of his contention that a finding of fact recorded by the assessing authority and not challenged in the first appeal, cannot be interfered with at the appellate stage in the Tribunal.

13. The record shows that classification of the consignments was changed based on a market enquiry. However, that market enquiry is not available with the custom authorities for being produced despite repeated adjournments. The appellant would point out that copy of the market, enquiry was not supplied to them also. Therefore, they are also not in a position to produce the same. The original authority's order speaks of samples being seen but those samples are not available now.

Therefore, this appeal has to be decided without regard to the market enquiry report and sample.

14. We have already noted in our order in the case of J.K. Imports that it was the categorical finding of the Commissioner (Appeals) that Lovage and Ajwain are one and the same and that finding was not challenged by the revenue in the appeal filed against that order. The same authority cannot be permitted to take a different view in regard to other consignments/importers. If the same item is known under different names, the proper thing to do would be to give the same treatment to consignments regardless of the name used in the trade documentation.

15. There is another problem also. The consignments are being imported under a special agreement among SAARC countries. The agreement is in respect of goods produced in those countries. Therefore, if an item is known as Lovage in Pakistan and as Ajwain in India, it has to be afforded the treatment due to Lovage. That is the only way the agreement can be worked. Further, the underlying agreement between the contracting countries is that Lovage is being grown in Pakistan.

Otherwise, a concessional agreement would not have been sought or granted. The contention of the Revenue goes contrary to this and for that reason, cannot be accepted.

16. Differing practices in regard to classification and valuation of identical goods (Lovage/Ajwain) is noted in our order in the case of J.K. Imports. We may read para-7 of that order: The contention of the Revenue is that Lovage and Ajwain seeds are both different and distinct commodity. The appellant Imported Ajwain seed, which is restricted item, therefore, the impugned order is rightly passed. In respect of valuation the contention is that the adjudicating authority relied upon the contemporaneous import of the same goods, which are of the higher value. We find that Commissioner (Appeals) in the impugned order gave a categorical finding that Lovage and Ajwain are the same. This finding is not challenged by the Revenue. Therefore, now the Revenue cannot argue that Lovage and Ajwain are two different commodities. We find that Lovage is not restricted item in case it is imported from SAARC countries. In the present case the appellant produced the necessary certificate showing the country of origin as Pakistan. Therefore, we find merit in the argument of the appellant that the goods in question are not restricted

goods. In respect of valuation we find the appellant produced two Bills of Entry showing the import of the same goods declaring the value between 400-415 US \$ PMT, whereas the value declared is 400 US \$. These imports are almost during the same period and one shipment was by the same vessel. Regarding these Bills of Entry the Customs authorities have not raised any objection regarding value of goods. These Bills of Entries were produced by the appellant before the adjudicating authority. We are surprised to see that neither the adjudicating authority nor the appellate authority has taken into consideration this piece of evidence produced by the appellant. In view of the fact that other imports, regarding the same goods, declaring the same price, were allowed hence the enhancement of value of goods imported by the appellant is not sustainable. Consequentially the redemption fine and the penalty imposed on the appellant is set aside and the appeal is allowed.

17. From what is noted above, it is clear that the authorities are not justified in rejecting the appellant's claim for import licence free entry, classification as well as assessment at the transaction value.

Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief, if any, to the appellant.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com