

Niccoorissa Ltd. Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-31-1989

Reported in : (1989)(22)LC636Tri(Delhi)

Appellant : Niccoorissa Ltd.

Respondent : Collector of Customs

Judgement :

1. In this matter, appellants imported goods which were described in the Bill of Entry as cross linked polythelene compound and were assessed to Auxiliary duty @ 40%. Subsequently, appellants claimed before the Assistant Collector of Customs for refund of duty based on Notification No. 67-Cus., dated 1.3.84. The claim was rejected by the Assistant Collector, who held that the goods were semi conductive compound as per the Bill of Entry, which described them as cross linked polythelene compound. On the other hand, the relevant Notification exempted partially goods described as low density or medium density polythelene moulding powder/granules falling under Heading 39.01/06. He said that the description in the Bill of Entry did not conform to that under the Notification; nor had the importer produced any evidence that the goods did answer the description in the relevant notification.

Accordingly, the claim was rejected.

2. This view was upheld by the Collector of Customs (Appeals) who observed that even the technical literature poroduced by the appellant did not establish that the

goods were low or medium density polythelene moulding granules/powder. He added that the appellants had failed also to produce the test result pertaining to their goods and that since the goods in question had been cleared and were out of Customs control, the contentions of the appellants could not be verified or examined. It is against this order that the appellants are before us.

3. We have heard Shri P.C. Chaddha, consultant and Shri P.K. Ghosh, Deputy Commercial Manager, on behalf of the appellants and Shri L.C.Chakraborty, JDR, on behalf of the department and carefully considered the submissions made, which are essentially a reiteration of what was stated by both sides before the lower authorities.

4. There is no denial before us that the description of the goods in the relevant Bill of Entry does not conform to the description of the exempted goods in the relevant Notification, the benefit of which is claimed by the appellants. On the other hand, appellants are relying on certain other imports made from the same foreign suppliers/manufacturers which, it appears were given the benefit of the relevant Notification as claimed in this case. If these facts are correct, we can sympathise with the appellants, but we cannot set aside the orders of the lower authority and grant any relief for it is one thing to claim that the impugned goods are identical to those covered by the other two Bills of Entry referred to and it is for another matter to substantiate it. Merely because the imports are purported to relate to the same order placed on the suppliers is no conclusive evidence of the identity of the goods actually imported, when the description in the Bill of Entry itself is a different. In fact, it is not explained why the same supplier should describe differently identical goods sent in separate consignments. What is more, the importers here should have been fully aware of what the goods were and if in respect of other lots of imports, the benefit of the relevant Notification was extended to them, they should have been aware and made a similar claim of benefit before the goods were cleared by them in this case. In view of the fact that the claim was made after the goods had passed out of Customs control, there were no means left with the Department to undertake any further verification.

5. We, therefore, see no reason to interfere with the orders of the lower authorities, which are upheld and the appeal is dismissed.

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