

Sayee Industries Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-10-1983

Reported in : (1983)LC1918DTri(Delhi)

Appellant : Sayee Industries

Respondent : Collector of Central Excise

Judgement :

1. This is a revision application (hereinafter called "appeal") filed before the Central Government which under Section 35P of the Central Excises and Salt Act, 1944, stands transferred to this Tribunal to be disposed of as if it were an appeal presented before the Tribunal.
2. The question in this case is whether the rubber play balls manufactured by the appellants were covered by the expression "sports goods" in Notification No. 55/75-Central Excises, dated 1-3-75 issued under Item 68 of the Central Excise Tariff, and were consequently exempt from excise duty.
3. The Assistant Collector of Central Excise, in his Order-in-Original, had, relying on the Explanatory Notes to the Customs Co-operation Council Nomenclature (CCCN), held that rubber play balls could not be treated as "sports goods", since such balls do not form part of standard sports equipment for various competitive games. His finding was upheld by the Appellate Collector.

4. In their appeal and at the personal hearing the appellants have made the following points :- (1) The lower authorities were not justified in holding that "sports goods" would only be standard sport equipment for competitive games and sports. The expression would not exclude articles used by children in their sports and games, and rubber play balls are so used; (2) Heading No. 97.01/08 of the Customs Tariff Schedule covers inter alia equipment for sports and outdoor games. Chapter Note 1 to this Chapter excludes certain articles. Rubber play balls are not so excluded and therefore should be deemed to be included in the category of "sports goods"; (3) In a list of sports goods published by the Sports Goods Export Promotion Council, which has been set up by the Government of India, Ministry of Commerce, rubber play balls have been included; (4) The tenicoit rings manufactured by the appellants in various sizes were allowed exemption as "sports goods".

It was pleaded if there was a doubt in the matter, the appellant should get the benefit of the doubt.

5. For the department, Shri Tayal supported the contention of the lower authorities that "sports goods" should be such articles as are usable for competitive games for which national or international rules and standards do exist. He pointed out that there were different headings in the CCCN, for balls of different types. Heading No. 97.06, included "appliances...for sports and outdoor games". According to the Explanatory Notes to the CCCN, this heading would include the following :- "Balls for various games (e.g. : football, rugby and similar balls, including bladders and covers for such balls; water polo and similar valve type balls; balls for cricket tennis, golf, etc.)".

Basically it was his contention that only such balls could be considered as sports, goods. Balls for billiards and table tennis would be specifically covered under heading No. 97.04, where these two games are mentioned. Accordingly billiard balls and table tennis balls could also be considered as "sports goods". All other balls would be considered as toys falling under heading No. 97.03, as indicated in the Explanatory Notes to that heading. According to him therefore the rubber play balls should be considered as toys and not as sports goods.

6. As regards the list of "sports goods" made out by the Sports Goods.

Export Promotion Council, Shri Tayal argued that this list was framed in connection with export promotion and covered a very wide range of goods. It carried no authority in the matter of interpretation of the Central Excise Tariff. Finally he submitted that exemption notifications should be construed strictly and in that view rubber play balls should not get the benefit of exemption as "sports goods".

7. We have carefully considered the question. It is true that according to the Explanatory Notes to the CCCN, rubber play balls would be classifiable as toys and not as "requisites for sports and games" (the particular expression "sports goods" does not occur in the relevant headings). However, it must be observed that these Explanatory Notes do not carry much weight in interpreting the Central Excise Tariff, which is not framed on the lines of the CCCN, as the Customs Tariff is. This consideration is all the more relevant in interpreting an expression like "sports goods" which does not figure in the CCCN.⁸ We do not also think that much assistance can be derived from the list of "sports goods" put out by the Sports Goods Export Promotion Council, even though it may be based on the replenishment import policy announced by the Government of India, in the Ministry of Commerce. As its name indicates, the Sports Goods Export Promotion Council is primarily concerned with export promotion, and for that purpose it is quite immaterial whether any goods can be strictly considered as "sports goods" or not. In fact, there are a number of items in that list which it would be difficult to consider "sports goods" in the normal sense. Examples are athletic supporters, chessmen and chessboards, flying kites and accessories, and indoor games like ludo, monopoly and snakes and ladders. Even rubber balloons and walking sticks are included in this list. We would not therefore consider the inclusion of "rubber play balls" in this list as conclusive evidence that they are classifiable as "sports goods".

9. However, purely as a matter of interpretation of the expression "sports goods", we find it difficult to see why rubber play balls should be excluded, when for instance balls for football, cricket and other games are included. The distinction

made by the Assistant Collector, that the latter category of balls form part of standard sports equipment for competitive games and sports, does not seem to be inherent in that expression. In Chambers Twentieth Century Dictionary, Revised Edition, "sports" is defined as follows :- "recreation; pastime; dalliance, amorous behaviour; play; a game, esp, one involving bodily exercise...".

In the present context, a fair definition would be the last, that is, "a game,, especially one involving bodily exercise". Games played with rubber play balls would undoubtedly involve bodily exercise. The number of such games which can be played with a rubber play ball is almost infinite. Some of them may be akin to recognised games such as cricket or football; some may not be so recognised but still well-known among children; and some may be the invention of the child itself. In the matter providing recreation or bodily exercise, there-does not appear to be any essential difference between a game involving a rubber play ball and one involving a standard cricket ball or football. While some adults and children have the facility of engaging in games and sports with standard equipment and under regulated conditions, many others may not have such a facility or privilege, and have to be content with playing in such manner as they can and with such equipment as is available to them. A rubber play ball is one of the cheapest and most versatile items of such equipment. In our view it would be wrong to exclude such rubber play balls from the description "sports goods" by importing into that expression a restrictive meaning based on the CCCN.10. For these reasons we allow the appeal and direct that consequential relief be granted to the appellants.

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