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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-27-1989

Reported in : (1990)LC87Tri(Delhi)

Appellant : Diamond Plastics

Respondent : Collector of Customs

Judgement :

1. This appeal is directed against the order dated 9-6-1987 passed by the Collector of Customs (Appeals) Bombay, by which he had upheld the order of the Assistant Collector of Customs, 'H' Group, Bombay rejecting the refund claim of the appellants herein and denying them the benefit of Notification 314/85-Cus., dated 11-10-1985 in respect of moulds for EVA and rubber. The Assistant Collector rejected their claim on the ground that the moulds in question were described in the invoice and Bill of Entry as "moulds for EVA and rubber" and because of this description, held that since the moulds are capable of use for rubber also, the appellants were not eligible for Notification 314/85-Cus., which exempts moulds falling within Chapter 84 of the Customs Tariff Act when imported for the manufacture of artificial plastic articles from Customs duty. The goods were assessed to duty under Tariff Heading 84.06 about which, there is no dispute. On appeal, the Assistant Collector's order was upheld by the Collector (Appeals).

2. Shri N.C. Sogani, the learned consultant appearing for the appellants submitted that the contract with the suppliers by the appellants was specifically for moulds for plastic footwear (EVA rubber). The word "and" was added by mistake between

"EVA" and "rubber" in the invoice by the suppliers. There was no such word in the original contract. He also submitted that the Collector (Appls.) was in error in holding that EVA was not a plastic material and in this connection, referred to the book 'Plastic Materials' by Brydson to prove the contrary. The learned consultant stated that EVA is Ethylene Co-polymers of Vinyl Acetate. Such articles are specifically mentioned in the sub-heading 3901.30 of the New Customs Tariff based on Harmonised System Nomenclature (HSN). There is also nothing in the Notification 314/85-Cus., to indicate that moulds should be exclusively for plastic. He further pointed out that the Collector (Appeals) has taken a new ground about industrial licence issued to the appellants which, according to the Collector (Appeals) includes convass and sports shoes which may have rubber sole. The learned consultant held that this was not a part of the Asstt. Collector's order.

3. Shri V. Chandrasekaran, the learned SDR appearing for the department pointed out that even according to Para 2 of the Assistant Collector's order, referring to the appellant's case, it is stated that the appellants are manufacturer of PVC footwear "etc." which would show that they were also manufacturing other than plastic footwear. He further referred to their own description of the articles in the invoice by the supplier that the moulds are for EVA and rubber, which would show applicability for other than plastic also.

4. We have carefully considered the submissions made by the learned consultant and the learned SDR. The notification 314/85 dated 11-10-1985 exempts moulds and dies falling within Chapter 84 of the Customs Tariff Act, 1975 when imported for manufacture of artificial plastic articles from so much of the duty as is in excess of 25% and the whole of the additional duty subject to the condition that it is proved to the satisfaction of the Assistant Collector of Customs that the moulds or dies have been imported for the manufacture of artificial plastic articles. The appellants imported the goods for which the invoice description was given as 'moulds for EVA and rubber'. The record shows that the Assistant Collector had taken the view "As the manufacturers' invoice describe these moulds for EVA and rubber, the benefit of Notification 314/85 is not applicable". The Collector (Appeals) had taken a view that all the co-polymers of EVA is not plastic material. This is based on his reading of the book "Plastic Materials" by Brydson. This view,

however, does not seem to be supported by the Note to Chapter 40 of the Customs Tariff. Note 4 to the Chapter clearly lays down that the expression "synthetic rubber" applies to unsaturated synthetic substances which can be irreversibly transformed by vulcanisation with sulphur, whereas it is not the case of the department that EVA is a product of vulcanisation with sulphur.

It is also not disputed that EVA is Ethylene Co-polymers of Vinyl Acetate. In this context, the specific description of Ethylene Vinyl Acetate Copolymers under Sub-heading 3901.30 of Heading 39.01 of the Customs Tariff Act is also important and this would also not go to support the ground taken by the Collector (Appeals). It may also be mentioned that the copy of the contract of appellant's supplier, which is on record, shows that their order with the supplier was 'moulds for plastic footwear (EVA rubber)' and not EVA and rubber. The Collector (Appeals) has made a further reference which admittedly is new ground taken, relating to the industrial licence of the appellants. A perusal of this industrial licence 14993 dated 18-2-1985 shows that they were licenced for PVC footwear. No doubt, certain items were added on 17-11-1985, which again includes PVC compound and also convass and sports shoes and leather shoes, but we find that this amendment was much subsequent to the sales contract for the present consignment which was finalised as per record on 27-8-1985. Therefore, the claim of the appellants for exemption is found, in the circumstances, as discussed above, to be well-founded as the moulds have been shown by reasonable evidence as having been imported for manufacture of plastic footwear.

In this view of the matter, we find lot of substance in the appeal, which is accordingly allowed.