Mitutronics Vs. Collector of Customs

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SooperKanoon Citation : sooperkanoon.com/5311

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-15-1989

Reported in : (1990)(25)ECC232

Appellant : Mitutronics

Respondent : Collector of Customs

Advocate for Pet/Ap. : Shri. Devan Parikh

Judgement :

1. Both the appeals involve a common question and are hence being disposed of by a common order.

2. The issue for consideration in these appeals is the classification of educational audio picture cards imported by the appellant.

The appellant which is a small scale manufacturer carrying on the business of manufacturing electronic teaching aids, imported a product called "Talk N' Teach", comprising of a small machine and complimentary cards. The first consignment of these "educational audio picture cards" was cleared under Heading 49.03 of the Customs Tariff Act without payment of any Customs duty. The 2nd consignment was classified under Tariff sub-heading 4911.99 both by the Assistant Collector and the Collector (Appeals), rejecting the appellant's claim for reassessment under Heading 49.03 as "Children's picture, drawing or colouring books". C/Appeal No. 2703/88-C has been filed against the order of the Collector (Appeals), classifying the import under Tariff sub-heading 4911.99.

4. The 3rd consignment was classified by the Assistant Collector under subheading 8524.21, while the Collector (Appeals) re-classified them under heading 8524.90 as 'other recorded phenomena'. C/Appeal No.187/89-C has been preferred against this order of the Collector (Appeals).

5. Shri Devan Parikh, learned Counsel for the appellant states that the product is a collection of educational visual cards, which can be termed, 'flash cards', containing a pictorial depiction in alphabetical order. Each card contains a magnetic tape running along the length of the card in a line below the picture and lettering and when inserted in the recorder, it becomes an audio-visual card. The product is of high educational value and it is the picture and letters/words/sentences on it that give the card its inherent character. According to him, the presence of magnetic tape does not in any way alter the basic character and purpose of the cards as educational picture cards. He submits that the entire card with tape is sought to be classified as magnetic tape under Chapter 85 which cannot be done on the basis of one component, namely the tape. According to him, the cards with picture and lettering can be used without the tape, which merely gives the cards a new flavour. He submits that the basic product is the card which is only modified by addition of the tape. To support his contention that it is the basic product alone which determines classification, he relied upon the decisions reported in :- 6. Shri Parikh contends that the goods imported cannot fall under Chapter 85 just because of the presence of a magnetic tape as the essential characteristic of flash cards is given by printing and, therefore, the goods are rightly classifiable under Chapter 49 as products of the printing industry.

7. On the aspect of how the product is understood in the market, learned Counsel submits that as the product is not manufactured in India, guidance is to be sought from international trade parlance which treats the product as an educational work book. He takes us through the product catalogues and a letter dated 5-4-1987 from the foreign supplier to emphasise that the product is a children's picture book. He also drawn our attention to the definition of "book" as contained in Section 1 of the Press & Registration of Books Act, 1867 which defines "book" as including 'any

volume part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed" and the meaning of the word "book" as found in Mitra's 'Legal Maxims' and Stroud's "Judicial Dictionary". According to him, the product which is a compilation of cards having logical sequence to each other, fulfils the definition of a book. He further relies upon Rule 2(b) of the Interpretative Rules and Chapter Note 6 to Chapter 49 of the Customs Tariff to buttress his contention that the product would squarely fall under Chapter 49, either under Heading 49.01 as printed books or 4903 as Children's picture books.

8. Shri V. Chandrasekharan, learned SDR for the Department, contends that the attraction of the product is the voice and not the picture and that it is a "Talking Box" according to the product catalogue itself.

Placing reliance on Rule 3(b) of the Interpretative Rules, he urges that, as it is the audio effect which gives the product its essential character, it has been correctly classified under sub-heading 8524.90.

9. We have heard the arguments advanced by both sides and carefully considered the submissions.

10. The question for decision is the classification of the goods imported. In this connection, it would be relevant to set out the rival entries in the Customs Tariff:49.01 : Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets85.24 : Records, tapes and other recorded media for sound or other similarly recorded phenomena, including matrices and masters for the production of records, but excluding products of Chapter 37 11. Chapter 49 of the Customs Tariff covers "printed books, newspapers, pictures and other products of the printing industry, manuscripts, typescripts and plans" and Chapter 85 deals with "electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers and parts and accessories of such articles." 12. Let us first examine whether the goods falls under Chapter 85 of the Customs Tariff, specifically under Heading 8524.90. The Assistant Collector by order dated 1st June, 1988, classified them under Heading 8524.21 as recorded media - magnetic tape of a width not exceeding 4 mm -

attracting 100% duty, on the ground that, by virtue of the audio tape affixed on the card, the principal effect is the "audio effect" produced by card recorder. In appeal, the Collector of Customs (Appeals) observed that "the item is composite article and recorded magnetic tape is impregnated in the picture card which is inseparable.

This picture card is to be played on sound reproducing machine called "card reader". Thus recorded magnetic tape forms an essential phenomenon. The point of consideration here is whether the classification under Heading 85.24 is permissible. It appears to me that the composite product like card affixed inseparably with magnitude tape, should not be classified under 8524.21. This is evident because this sub-heading covers only magnetic tape. Nevertheless the residury sub-heading 8524.90 is a sub-classification which will cover the composite product also as long as can be called a recorded phenomenon which provides the essential characteristic to the product. A product like card which has some pictures with their names or description and can be played upon sound re-producing machine when it is made in combination with a magnetic tape, should appropriately fall under residuary sub-heading 8524.90 which inter alia covers all recorded phenomenon".

13. The Collector (Appeals) has classified the goods under sub-heading 8524.90 for the reason that recorded magnetic tape forms the essential feature of the composite article. In our view, his conclusion is incorrect as, from an examination of the goods, it is clear that the picture and lettering on the cards form the inherent characteristics.

The cards pictorially depict scenes or colourful objects which draw the attention of children. In each card, there is a literary text to suit the pictorial content. At the lower end of the card is a piece of audio-tape which is pasted on it. The moment such a card is inserted in the recorder the machine gets automatically activated and it reads out the literary text written as the card passes through it. The child obviously gets attracted to the colourful appearance of the card and at the same time, there is amusement value of replacing the cards in the machine one by one. Such a product is of high educational value, contributing to a great extent to the child's learning. It is an invaluable teaching aid. The intrinsic value of the card lies in the picture depicted on it as well as the alphabet or word or sentence written thereon. Even in the absence of the audio-tape, the card would have intrinsic educative value. On the other hand, a card with no picture or lettering but with only an audio-tape thereon would be of no value at all.

14. The product catalogues describe the goods imported as "audio-visual learning cards" in different series containing "numerous of books" and as "educational work books". They have been described as "a simple and effective audio-visual learning system". Children touch, look and listen as they play with the "Talking Box", which comes with an introductory volume of audio-visual learning cards. It is a learning aid which employs children's active participation through touching, looking as well as listening.

15. Admittedly the goods are composite articles. We see great force in contention of the appellant that in the case of composite articles, their basic character and purpose has to be taken into account for purposes of determining classification and duty cannot be levied on the basis of one of the components. This is the view held by the Madras High Court in the decisions reported in 1978 (2) E.L.T. J 160,1979 (4) E.L.T. J 9,1979 (4) E.L.T. J 36 and the Bombay High Court in 1981 (8) E.L.T. 344. In this case, the basic character is imparted by the picture and lettering and not by the audio-tape and the basic purpose is to serve as an educational aid. Rule 3(b) of the General Rules for the Interpretation of the First Schedule to the Customs Tariff Act reads as follows :- "Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which given them their essential character, insofar as this criterion is applicable." The material or component which gives the goods imported, their essential character is the pictorial depiction and lettering and not the audio-tape and, therefore, the goods are not covered under Chapter 85. Therefore, viewed in the light of the above discussion, the goods do not fall within the purivew of Chapter 85 of the Customs Tariff.

16. Having ruled out classification under Chapter 85, it now remains to be seen whether the imported goods fall under Heading 49.01; 49.03 or 4911.99. The Collector (Appeals) in his order (impugned in Appeal No.C/2703/86-C) has held that the goods fulfil the conditions of Heading 49.03 which reads as follows: "this heading is restricted to those picture books clearly compiled for the interest or amusement of children or for guidance in their first steps of primary education provided the prictures form the principal interest and are not subsidiary to the text". However, he has ruled out classification under Heading 49.03 for the sole reason that the goods are not compiled in book form. We see great force in the contention of the Counsel for the appellant that this reasoning is wrong. Even loose sheets of paper are recognised by trade and commerce to be "books". Books could even be in the form of sheets or literary texts, each sheet having a continuous link with the other. The goods imported are recognised as "books" in the international market (they have come into the Indian market for the first time and hence trade understanding has not yet been created in India). The appellant's suppliers have described the goods in their pamphlets as 'books'. The word "Bk" (book) is found on the cards. The fact that books can be in loose sheets of paper is also borne out by Chapter Note 4 to Chapter 49 which reads as follows :- (a) A collection of printed reproductions of, for example, works of art or drawings, with a relative text, put up with numbered pages in a form suitable for binding into one or more volumes; (b) A pictorial supplement accompanying, and subsidiary to, a bound volume; and (c) Printed parts of books or booklets, in the form of assembled or separate sheets or signatures, constituting the whole or a part of a complete work and designed for binding." 17. Reference to the definition of "book" in The Press & Registration of Books Act, 1867, Mitra's "Legal & Commercial Dictionary" and Stroud's 'Judicial Dictionary' also shows us that "book" includes even loose sheets of paper. The entire material placed before us leads to the inevitable conclusion that the goods imported are books, covered by Chapter 49 as products of the printing industry.

18. The question that remains for determination is whether the goods fall under Heading 49.01 or 49.03 as claimed by the appellant or 4911.99 as held by the Collector in his order (impugned in Appeal No.2703/86-C). Heading 4911.99 is a residuary entry. The lower appellate authority has relied on Rule 3(c) of the

Interpretative Rules to hold that the goods are to be classified under Heading 49.11. Rule 3(c) reads as follows :- "When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration." 19. This rule is inapplicable to this case as it can be resorted to only in those cases where there are two competing entries with regard to a particular product. Rule 3(a) sets out that where goods can be classified under more than one Tariff heading, the specific description should be preferred to the general description. This principle em bodies a cardinal canon of interpretation and has been upheld by various decisions of the Tribunal (among them being the decisions reported in [1987 (13) E.C.R. 137 and Collector v. Fertilizers and Chemicals Travancore Ltd. - 1986 (24) E.L.T. 388] and by the Madras High Court in the decision reported in 1988 (33) E.L.T. 22. In this case, the goods fall under the more specific description in Tariff Heading 49.03 which covers - "children's picture, drawing or colouring books". The imported picture books are clearly compiled for the interest and amusement of children and for guidance in their first steps of primary education and the pictures form the principal interest and are not subsidiary to the text.

20. The goods imported are correctly classifiable under Heading 49.03 of the Customs Tariff.