

Collector of Customs Vs. Electronic Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-29-1983

Reported in : (1983)(14)ELT2394TriDel

Appellant : Collector of Customs

Respondent : Electronic Industries

Judgement :

1. The proceedings relating to proposed review under Section 131 (3) of the Customs Act, 1962 by the Government of India of order-in-appeal No.56/81, dated 17-2-81 of the Appellate Collector of Customs, Delhi on the appeal of M/s. Electronic Industries (the Respondents) against an order dated 20-3-81 of the Assistant Collector of Customs, Foreign Post, New Delhi have been transferred to the Tribunal for disposal under the provisions of section of the Act.

2. The Respondents imported synthetic industrial diamonds via post parcel D. No. 245879 which was released on 21-7-79 after payment of customs duty @ 100% plus 20% under heading 92.01/13, CTA plus CVD @ 8% under item 68, GET. A claim for assessment under heading 71.02 read with Notification No. 98/78 (should be 131/77) @ 40%. The claim was rejected since note 2(1) of Chapter 71 excludes goods covered among others by Chapter 92 and the goods are used for record player needles i.e. musical instruments. Further, according to Explanatory Note to heading 92.13, "sapphires (usually synthetic) and diamonds (whether or not mounted) for sound recording or reproduction" are classifiable under this heading. The Appellate Collector, however, held that the goods were classifiable under

heading 71.02 read with the relevant notification on the grounds that (1) the industrial diamonds in the form imported cannot surely be identified as parts of any goods falling under Chapter 90, 91 or 92 and their general uses in industry including ferrite parts, hard metal points for bearings or traces and points for phonographs, (2) preamble to Notification No. 131-Cus., dated 1-7-77 mentions, inter alia that industrial diamonds whether natural or synthetic, in dust or in powder form falls within Chapter 71 and (3) there is further corroboration in Note 3(f) to Chapter 20 CTA which states that precious and semi-precious stones (industrial, synthetic or re-constructed) or dust or powder of such stones are not covered and the heading would be 71.02/04.

3. The Central Government, being of the tentative view that since the industrial goods had been given specific shape for use as lips of record player needles which the importers are manufacturing and the invoice clearly shows some of the industrial diamonds, were for 45 vpm and others for 78 vpm needles, the goods were specially moulded for the purpose and are identifiable parts of musical instruments in terms of Note 2(1) to Chapter 71 and would be classifiable under heading 71.02, the Appellate Collector had erred in his decision, issued the impugned notice to show cause why the appellate order should not be set aside and the order of the Assistant Collector restored.

4. In reply, the respondents stated the goods are used in several industries as raw material; they are in the form of granules of very small size, 1 mm long and weighing several thousand parts of a gram; they can be used for several purposes just as grinding and drilling; the catalogue submitted at the appeal stage shows the different uses; they are processed which includes mixing with lubricants, powder drying and adhesive deposition, "the complete finished product is like Plastics, Rubber, Aluminium and Synthetic Diamonds, and is called Replacement Stylus which is in no case a musical instrument and has nothing to do with music"; industrial synthetic diamonds fall under Chapter 71 and not 92; when a representation was made, the Finance Ministry sent copies of Notifications 33 & 67/77 relating to Chapter 71; irrespective of their shape and size, the goods are synthetic industrial diamonds not falling under Chapter 92 hence not excluded by Note 2 under Chapter 71. Notification No. 131, dated 1-7-71 is applicable and 40%

duty has always been charged vide their parcel 164261/6/77, dated 1-7-77 and T-6/1282/79 of M/s. Victory Gramophone Co.; the goods fall under Chapter 71 irrespective of end use; they have to be processed like sizing, mixing with oil and powder and then manufactured as tips of record player needles ; they were imported in fine granular shape and could not be used for sound recording or reproduction ; a record needle is not a musical instrument and a record player is not always used to record music as it is used for recording speeches etc.; and the Appellate Collector has rightly observed that they cannot be identified as parts of musical instruments and have several other uses. Government's contentions are not, therefore, correct. Shri Chatterjee stated that the goods imported were synthetic industrial diamonds (sapphire points). On interpretative Rule 2(a) it was held that watch dial feet have essentially the character of watch parts and are to be assessed as such (1983 ECR 814D). Note 2(m) of Chapter 71 excluded goods falling under Chapter 92 and the Government of India had also held that such goods are identifiable parts of musical instruments. In the case of Victory Gramophone Co. referred to by the Respondent, this Bench had itself come to a similar conclusion.

In 1983 ECR 20D Madras, it was held that the BTN can be used as an aid and p. 1694 of the Explanatory Notes states that sapphires, usually synthetic and diamonds, whether or not mounted for sound reproduction are included in Chapter 92. Moreover, under Notification No. 30-Cus., dated 1-3-81, (i) synthetic industrial diamonds and (ii) sapphire tips, falling under Chapter 92 used for the manufacture of cartridges or stylus have been granted concessional rate of duty. He, therefore, wanted the impugned order to be set aside.

5. For the Respondent, Shri Chopra reiterated the arguments advanced in the written reply. He contended that the goods were raw material in granule form; 80,000 pieces synthetic industrial diamonds other than gem variety, in three sizes and 10,000 pieces of other description were invoiced and imported. They can be used for other purposes and undergo various processes including point grinding before use in stylii. He wanted the notice to be withdrawn.

6. We have carefully considered the matter. This Bench has, in the case of Victory Gramophone Co., held that sapphire tips are correctly assessable under Heading 92.01/13. This importer has been cited as a precedent by the present Respondent and* therefore, it is to be deemed that the cases are on all fours. No evidence has been led to show that the goods imported do not have the special size and shape necessary for their use in stylii, the manufacture of which they are undoubtedly used. Such stylii are used in sound recorders or reproducers and the argument they are not musical instruments carries no weight in view of the description in heading 92.01/13. The nature of the processes originally mentioned is only for the purpose of fitment and vague statements by counsel that point grinding is involved, without any supporting evidence to show a basic change in the special shape, size and character of the imported goods, cannot detract from their being classified as parts of sound recorders or reproducers coming under Heading 92.01/13. We, therefore, set aside the order of the Appellate Collector and allow this appeal.

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