

In Re: Permalite Electricals (P)

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Court : Authority for Advance Rulings

Decided On : May-13-2004

Reported in : (2004)(168)ELT164AAR

Judge : S S Quadri, S Pal

Appellant : In Re: Permalite Electricals (P)

Judgement :

Appellants: In Re: Permalite Electricals (P) Ltd. Vs.

For Appellant/Petitioner/Plaintiff: R. Venkataraman, Director and Balbir Singh, Adv. For Department: P.K. Haldar, Deputy Commissioner and Sanjay Sharma, Appraiser Customs Tariff Act, 1975 - Section 9A; Customs Act, 1962 - Section 28I(2) Mathuram Agrawal v. State of Madhya Pradesh, (1999) 8 Supreme Court Cases 667, 2004 (166) E.L.T. 49 (Tri. - Mumbai); Philips India Limited v. Commissioner of Customs, Mumbai, 2004 (166) E.L.T. 49 (Tri. - Mumbai) 1. M/s. Permalite Electricals (P) Ltd. (hereinafter referred to as the 'applicant'), has filed an application for advance rulings before the Authority for Advance Rulings (Customs and Central Excise) (in short the "Authority") which was received in the Authority's Office on 10-2-2004. The short question on which advance ruling has been sought by the applicant is - "Propose to manufacture Compact Fluorescent Lamps. CFL are under anti-dumping. Since in our case we propose to import the coated tube with filament which would be component of CFL and we desire advance ruling that the tubes as a components will not come under Anti-dumping." 2. Our attention was drawn by the applicant to the Notification No.138/2002-Cus., dated 10-12-

2002 by which anti-dumping duty has been imposed on Compact Fluorescent Lamps (hereinafter referred to as CFL).

The main thrust of the argument of the applicant is that the anti-dumping duty has been imposed on CFL falling under sub-heading 8539.31 of the First Schedule to the Customs Tariff Act, 1975, originating in or exported from People's Republic of China and Hong Kong and imported into India. As per the table attached to this notification, anti-dumping duty will be leviable as an amount per unit in US Dollars as specified in columns (4) and (5) of the Table corresponding to the two categories namely CFL "without choke" and "with choke" respectively. The applicant's case is that they propose to import coated tube with filament which is a component of CFL and not CFL itself and therefore, this will not be covered by the language of the notification which clearly imposes anti-dumping duty on CFL without choke or with choke. According to the applicant, no anti-dumping duty will thus be leviable on the item proposed to be imported by them. The jurisdictional Commissioner while conceding that the item is not CFL as is understood in the market has however, contended that the item has nevertheless acquired the essential character of a CFL and therefore, by virtue of the Rules of interpretation, Rule 2(a) in particular, the item in question would be classifiable as CFL and consequently the anti-dumping duty under this notification will be leviable thereon. The applicant contested the Commissioner's views on the ground that the language of the notification is clear on this aspect and the item proposed to be imported by the applicant, being a component of a complete CFL, would be specifically classifiable under sub-heading 8539 90 10 in sharp contrast to complete CFL which would be classifiable under a different sub-heading namely 8539 31 10 and on which alone the anti-dumping duty is leviable.

3. In order to appreciate the point on which advance ruling has been asked for, it is necessary to refer to the Notification No.138/2002-Cus., dated 10-12-2002. A close reading of this notification reveals that having regard to the findings of the designated authority which had proposed to impose definitive anti-dumping duty, on all imports of CFL, except the exports of CFL, both with and without choke, by M/s. Phillips and Yaming, People's Republic of China, originating in, or exported from People's Republic of China and Hong Kong, the Central Government in

exercise of powers conferred by Sub-sections

(1) and

(5) of Section 9A of the Customs Tariff Act, read with Rule 18 and Rule 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, imposed by this notification, "on Compact Fluorescent Lamps falling under Chapter 85 of the First Schedule to the said Customs Tariff Act, originating in or exported from the country specified in Column

(2) of the Table annexed hereto, when exported by exporter mentioned against the corresponding entry in Column

(3) of the said Table, and imported into India, an anti-dumping duty at the rate which is equivalent to the difference between the amount mentioned in corresponding entries in Columns

(4) or Column

(5) of the said Table, and the landed value of the imports per unit in US \$". The Table referred to above is as under :- M/s. Hangzhou Feihua Lighting and Electrical Appliance Co. . Ltd. (Through M/s. CMEC Engineering Machinery Import and Export Co. Ltd.)

4. It is apparent from the wordings of the notification that antidumping duty has been imposed on CFL (Compact Fluorescent Lamps) falling under Chapter 85 of the First Schedule to the Customs Tariff Act (both without choke and with choke). It is not in dispute that the applicant proposes to import the item in question from People's Republic of China, the producer/exporter being other than those specifically named in column

(3) of the table of the notification and hence would be covered under the heading "All other exporters". It is also not in dispute that the item proposed to be imported by the applicant is without choke. The moot point for consideration is therefore, whether the coated tube with filament which the applicant is proposing to import

can be treated as CFL falling under Chapter 85 of the First Schedule to the Customs Tariff Act or not.

5. The sample of the item proposed to be imported by the applicant as submitted by them during the hearing before us shows that it consists of two bent tubes joined together and sealed at both ends having coating inside and with one pair of filaments fixed at one of the two sealed ends of each of the two tubes. The applicant has indicated the manufacturing process which they propose to undertake as per which a CFL has 6 components, namely :- Out of the above, they propose to import only (a) - sealed coated tubes with filament, while the rest of the "components" would be indigenous.

According to the applicant when all these components are put together through a manufacturing process then only the CFL comes into existence.

They have also pointed out that the populated PCB constitutes major portion in terms of value and technology in the CFL.

6. We observe that the Notification 138/2002-Cus., dated 10-12-2002 being one which imposes duty needs to be interpreted strictly. It is a settled law that taxing statute has to be strictly construed and nothing can be read into it. The first paragraph of the notification specifically refers to import of CFL falling under sub-heading 8539.31 of the First Schedule to the Customs Tariff Act. It also indicates the conclusions which the "designated authority" vide its preliminary findings had drawn in the matter of imports of CFL into India from People's Republic of China and Hong Kong. Even the final findings of the "designated authority" proposed to impose definitive anti-dumping duty on all imports of CFL except the exports of CFL, both with and without choke, by M/s. Phillips and Yarning, People's Republic of China, originating in or exported from Peoples Republic of China and Hong Kong. With this background, the Central Government, on the basis of the above findings of the "designated authority" imposed the anti-dumping duty on "Compact Fluorescent Lamps falling under Chapter 85" subject to the details specified in the Table in the notification.

It would therefore, be reasonable to hold that the focus and the basis of imposition of anti-dumping duty are in respect of an article which is Compact Fluorescent Lamps falling under sub-heading 8539.31. It is a well settled rule of interpretation that in a legislation relating to a particular trade, business, profession, art or science, words having a special meaning in that context are understood in that sense. The Hon'ble Supreme Court has consistently taken the view that, in determining the meaning or connotation of words or expressions describing an article in a Tariff Schedule, one principle which is fairly well settled is that those words and expressions should be construed in the sense in which they are understood in the trade by the dealer and the consumer. The reason is that it is they who are concerned with it, and it is the sense in which they understand it which constitutes the definitive index of legislative intention. From a plain reading of the notification under consideration it is apparent that anti-dumping duty has been imposed on CFL in both forms, namely, with choke and without choke. The notification therefore, has clearly covered two different stages of Compact Fluorescent Lamp system, one being CFL complete with choke and the other being a stage before that namely, CFL without choke. It has not gone to cover any item which has not even reached the stage of being called CFL without choke. There does not appear to be any doubt or dispute about the item proposed to be imported by the applicant not being a CFL as is commonly understood in the concerned trade or market. Samples of a typical CFL without choke as normally available in the market, placed by the applicant as well as by the representatives of the jurisdictional Commissioner before us during the hearing, confirm this view. Therefore, it would be reasonable in our opinion to conclude that the item proposed to be imported by the applicant and for which the advance ruling has been sought, cannot be considered even as CFL without choke as is commonly understood in the concerned trade or market and hence it will not be covered by the notification under consideration.

7. It has been submitted before us on behalf of the jurisdictional Commissioner that the sealed coated tube with filament which is proposed to be imported by the applicant has acquired the essential character of a CFL and therefore, would be liable to anti-dumping duty under this notification. In support of their contention reliance has been placed on Rule 2(a) of the Rules of Interpretation which reads

as under :- "any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include the reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled." 8. The "General Rules for the interpretation", we observe, are of the Schedule to the Customs Tariff Act and are an aid for deciding the proper classification of the goods under different tariff heading/sub-heading in that Schedule which specifies the rates at which duties of customs are to be levied under the Customs Act. The Schedule does not impose the duty but only gives the rates. The notification under consideration on the other hand, imposes the duty on a specified article and also prescribes the rate thereof. From a reading of Rule 2(a) as quoted above, it is apparent that it is in the form of a legal fiction introduced for the limited purpose of classification of an incomplete or unfinished article vis-a-vis any reference in a heading to an article in the Schedule. It cannot be used to modify the physical identity of an article mentioned in the notification imposing a duty on that article which has to be interpreted strictly. The Central Government imposed anti-dumping duty on CFL (without or with choke) through this notification issued under Section 9A of the Customs Tariff Act, 1975 and not on incomplete CFL (without or with choke). The expression "Compact Fluorescent Lamps falling under Chapter 85" denotes two distinct factors namely, the specific identity of the article and its classification under the Customs Tariff Act. Even assuming that by virtue of the fiction of the interpretative Rule 2(a), an incomplete CFL may become classifiable under the same chapter/heading/subheading in the Schedule as that of a CFL if the incomplete CFL has acquired the essential character of a CFL, the article would be falling under Chapter 85. But this will not be enough to bring it within the sweep of the notification unless the article is a Compact Fluorescent Lamp (with or without choke) as is commonly understood in the related trade or market. The article proposed to be imported by the applicant is evidently not CFL though may be classifiable under Chapter 85 of the First Schedule to the Customs Tariff Act. The notification in question nowhere stipulates that the expression "Compact Fluorescent Lamps falling under Chapter 85" (without or with choke) would include

incomplete CFLs falling under Chapter 85 if they have acquired the essential character of the complete CFLs (without or with choke) to attract the imposition of anti-dumping duty. As has been observed by the Hon'ble Supreme Court : Mathuram Agrawal v. State of Madhya Pradesh - (1999) 8 Supreme Court Cases 667 "The intention of the legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language.

It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature".

We are, therefore, not in a position to accept the contention put forth before us in this regard on behalf of the jurisdictional Commissioner.

9. We are, accordingly, of the view that the sealed coated tube with filament as per the sample produced by the applicant before us proposed to be imported by them, is not a CFL as is commonly understood in the concerned trade or market and therefore, it will not be liable to anti-dumping duty under the notification cited above.

10. The representative on behalf of the jurisdictional Commissioner also raised a point that the application filed by the applicant in this case is barred by Section 28-I(2)(b) of the Customs Act, 1962, inasmuch as the question raised in this application is the same as in a matter already decided by the Appellate Tribunal in its decision reported in 2004 (166) E.L.T. 49 (Tri. - Mumbai) in the case of Philips India Limited v. Commissioner of Customs, Mumbai. We are unable to appreciate the relevance of this contention at this stage since this could have been a relevant point for examination at the time of deciding whether the application should be allowed or rejected as required under Section 28-I(2) of the Act. This point was not placed before the Authority at that stage and having allowed the application in terms of Section 28-I(2) and then having gone to the stage of examining the

application for the purpose of pronouncing its advance ruling, we do not find any justification for entertaining such a plea at this stage. In any event the goods in that case are not identical with goods in question.

11. Having given careful consideration, we rule on the afore mentioned question that anti-dumping duty will not be chargeable on the said sealed coated tube with filament under the Notification No.138/2002-Cus., dated 10-12-2002.

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