Collector of Customs Vs. Super Packers

Collector of Customs Vs. Super Packers

SooperKanoon Citation : sooperkanoon.com/5960

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-12-1990

Reported in : (1994)(70)ELT347TriDel

Appellant : Collector of Customs

Respondent : Super Packers

Judgement :

1. This appeal arises out of an order-in-appeal No. C3/1401/1982 dated 31-8-1982.

2. The respondents imported a consignment of automatic plate processors comprising of Exposure Unit, wash out unit and Oven Wash out Unit and Photopolymer plates. The Assistant Collector classified the articles imported under Heading 90.10 C.T.A. and 37.01/08 (1) respectively. The respondents filed an appeal to the Collector (Appeals). The Collector (Appeals) allowed the appeal classifying the items under T.I. 84.34 C.T.A. 1968.

3. The Collector, by his order of February, 1983, filed an appeal against the order of the Collector classifying the photopolymer plates under Heading 84.34. In his appeal, he stated that the decision of the Appellate Collector of Customs in regard to the first item for re-assessment under Heading 84.34 C.T.A. (with additional duty under Item 68 C.E.T.), is acceptable. The same is being implemented.

4. The main ground in the appeal is that Chapter 37 covers photographic and the cinematographic goods. The Explanatory Note under this Chapter is as under : "The photographic plates, film, paper, paper board and cloth falling within Chapter 37 are those with one or more layers of any emulsion sensitive to light or other radiations (e.g. infra-red, ultra-violet or X-ray) whether for reproduction in monochrome or colour. Certain plates are, however, not coated with an emulsion but consist wholly or essentially of photo-sensitive artificial plastic material which may be affixed to a support." The photopolymer plates imported by the firm are sensitive to ultraviolet rays. They are not light sensitive but need not be so to be classified under Chapter 37.

In view of the above, the assessment under Heading 37.01/08 of the Customs Tariff would be in order.

5. The appellants also filed a Misc. Application & raising additional grounds questioning the validity of the order of the Collector with reference to the other two items i.e. the automatic plate processors comprising of exposure unit, wash out unit and oven wash out unit. In the Misc. Application, the appellants claimed the classification of these two items under Heading 90.10 of the Customs Tariff Act.

6. Shri Sridharan, appearing on behalf of the respondents, contended that the Collector while filing the appeal, accepted the order of the Collector in so far as the automatic plate processors comprising Exposure Unit, wash out unit and oven wash out unit. Therefore, the Assistant Collector now cannot raise the additional grounds challenging the order of the Collector in respect of the other two items having accepted the same at the Collector's level. He submitted that the appeal should be confined only to the ground on which the Collector has filed the appeal. In support of his contention, he relied upon the order of this Tribunal in Collector of Central Excise v. Oswal Vanaspati & Allied Industries (1989 (42) E.L.T. 3 (Tribunal) wherein it was held that - "The ground of appeal should be confined only to the ground which was authorised by the Collector." 7. Shri Chakraborty, appearing on behalf of the appellants, contended that under Sec. 129(A)(2), an appeal is filed. Therefore, it is open to the Department to raise the additional grounds and seek larger relief.

As regards classification of the photopolymer plate, he submitted that they should be classified under Heading 37 and not under 84.34. Shri Sridharan, on the other hand, relying on the order of this Tribunal in Kasturi & Sons v. Collector of Customs (1989 (44) E.L.T. 488 (Tribunal)), submitted that the issue is now covered by the said order and classification on photopolymer plates under Heading 84.34 is valid.

8. The first question for consideration is whether the Assistant Collector is entitled to raise the additional ground, when the Collector has accepted the same while filing the appeal. We agree with Shri Sridharan that the Assistant Collector cannot raise an additional ground which was given up by the Collector while filing the appeal. In this view, we are fortified by the order of this Tribunal, relied upon by the Ld. Advocate, Sh. Sridharan and referred to above. Therefore, we reject the Misc. Application and dismiss the same.

9. As regards the question of photopolymer plate, this Tribunal in Kasturi & Sons (supra) held that "the terms photographic plates and films and printing plates have not been defined in the Tariff.

Therefore, these terms would have to be construed in their popular sense i.e. the sense in which people conversant with the subject-matter with which the statute is dealing could attribute to it and on this test there can be no doubt that the printing plates at the time of import or clearance from the Customs deserve description as printing plates and not as photographic plates or films. Competing entry falling for consideration is 84.34 where the goods are printing plates. In the context of this entry, use of the goods becomes relevant. The goods cannot also be denied classification as printing plates merely on the ground that photographic principle is involved in its use or scientifically and technically it may be photographic plates." 10. The Collector, in the order, observed that "the photopolymer plate is found to be especially developed plastic plate, made of artificial plastic, especially designed for exclusive use in the printing industry and that this plate is not kept in a dark room nor is it in the light-proof covers, but they are kept in the open day-light." In other words, the photopolymer plates are used in the printing industry. It may be that the principle on which the equipment is designed, is a photographic principle but that does not make the equipment a photographic plate. Therefore, the appropriate classification is Heading 84.34. We agree with the Collector. The appeal is, therefore, dismissed as it is devoid of any merit.