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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-27-1990

Reported in : (1991)LC456Tri(Delhi)

Appellant : Sterlite Cable Ltd.

Respondent : Collector of Customs

Judgement :

1. Both appeals involve identical issues and are hence heard together by consent of parties & disposed of by a common order.

2. The classification of marble slabs imported by the appellant is to be determined in these appeals.

3. C/1768/85-C - The appellants imported a consignment of Raw Unfinished Arabescatc Marble Slabs & claimed clearance under OGL in terms of description in Serial No. 16 of Part Ill-List 8 to Appendix - 10 of the AM - 84 Policy Book. Classification of the goods was claimed under Heading 25.01/32 of the Customs Tariff Act, 1975 read with T.I.68 CET & exemption from payment of countervailing duty/additional duty was claimed under Notification 48/79-Cus dated 1-3-1979. The goods were first examined on 12-3-1984. On subsequent examination on 23-4-1984, the Assistant Collector (Bocks) opined that since one side of the marble slabs was polished to glossy finish, they fell for classification under Chapter 68 C.T.A. as articles of marble. As the release of the goods was held up, the appellants filed a writ petition in the Hon'ble Bombay High Court & obtained

clearance under Heading 25.01/32 CTA, on furnishing a 100% Bank guarantee. A show cause notice was issued on 27-5-1984, proposing classification under Heading 68 CTA and also alleging illegal import without licence as the goods appeared to be covered by Appendix 4 Serial No. 93 i.e. consumer items & cannot therefore be treated as Raw Material for actual users (industrial). As the Additional Collector of Customs passed an order of confiscation of goods on 21-7-1984 during the pendency of the writ petition (W. P.891/84), contempt action was initiated. By order dated 26-7-1984, the Hon'ble Bombay High Cour4 set aside the adjudication order of 21-7-1984 with liberty to the Department to re-adjudicate the matter which culminated in the impugned order, classifying the goods under Heading 68 CTA r/wT.I.68 CET, & confiscating them under Section 11 l(d) of the Customs Act, 1962 r/w Section 3 of the Imports & Exports (Control) Act 1947 with an option to redeem the goods on payment of a fine in lieu of confiscation. Hence this appeal.

C/1843/85-C - The consignment herein is Raw Unfinished White Carrara-C Marble Stabs. Clearance of the goods was ordered on 8-6-1984 by the Hon'ble Bombay High Court in W.P. 1183/84. The show cause notice in this case was issued on 11-10-1984 and the adjudication order was passed on 14-5-1985.

4. We have heard Shri K. Srinivasan, learned consultant & Shri M.Jayaraman, learned SDR & considered their submissions. The dispute relates both to classification of the imports and to the validity of the import.

5. Let us take up the issue of classification first. The goods were first inspected on 12-3-1984 & the examination report reads as: - "Lot inspected. Opened & inspected 5% after selection. Description checked. One side of the slabs is polished & finished. However, the slabs as it is not ready for use since it is to be further cut to shape & size. Two sides of the slabs are cut & other 2 sides are uncut & not of uniform edges." "Lot inspected of all the_Opened_& examined the goods. Description checked. These are marble slabs. However, 10% of the slabs are having uneven edges. All the slabs are fully polished on one side.

In our opinion, the goods will fall under Chapter Heading 68".

The contention of the appellants is that the slabs are only roughly squared by sawing; they are not of uniform size; the edges have to be cut & smoothened & polished, hence are properly classifiable under Heading 25.01/32 CTA which covers "mineral products" & not under Heading 68 which applies to "articles of stone".

6. The Department has based its conclusion as to classification on the fact that the goods are admittedly polished & hence are taken out of the purview of Chapter 25 which covers goods in crude state only.

Reliance is placed on the certificate given by M/s. Chandrashekher & Bhagat, Architects (at p. 15 of the paper book) that "the brightness is the result of grinding the surface by means of grinding the surface by means of grinding stones along with a compound of tin-oxide" to support the submission that the slabs were polished prior to import in order to help detection of cracks which is a normal practice before marble is purchased. The certificate of Mr. M. R. Lodh, Chartered Engineer, at P.21 of the paper book, is to the same effect. To our minds, it appears that the reliance on these certificates is misplaced. Heading 25.01/32 covers "mineral substances,, not elsewhere specified...." Note 1 to Chapter 25 sets out that this Chapter is to be taken to apply only to goods which are in the crude state or which have been washed...but not calcined or subjected to any further process other than a process specially mentioned in respect of the goods described in Note 3. Note 3(a) covers quartizite, slate, monumental & building stones, dolomite & natural steatite, not further worked than roughly split, roughly squared or squared by sawing.

The consignment has been worked further than rough squaring - it has been subjected to the process of polishing Therefore, for the purpose of the tariff which recognises only certain specified processes under the coverage of Chapter 25, the goods go out of Chapter 25 and fall under Chapter 68 as "articles of stone." For this reason, the certificates of the experts do not further the appellants' case.

7. Our attention has been drawn to the order of this Tribunal in the case of CCE, Jaipur v. Fine Marble & Mineral Pvt. Ltd. [1985 (22) ELT 128] and in particular to para 8 which is reproduced below :- "8. "Marble" as noticed from Encyclopaedia

Britannica often occurs as metamorphic rocks. The quarry of marble is very limited.

Channelling machines are utilised to make cuts wide and deep. The marble blocks, outlined by joints and cuts are separated by driving wedges into drill holes. It further reads "mill-sawing into slabs is done with sets of parallel iron blades that move back and forth and are fed by sand and water. The marble may be machined with lathes and carborundum wheels and is then polished with increasingly finer grade of abrasive". It is, therefore, seen that only after machining and polishing and such other processes are applied to the cut slabs, do they become a marketable commodity viz. 'marble tiles'. In short the manufacture of an article known as marble could be said to be complete only after all or most of these processes are undergone to result in a distinctly different commodity." This decision examined the question as to whether "cutting or sawing of marble blocks" constituted 'manufacture' within the meaning of Section 2(f) of the CESA 1944. The Tribunal in that case was not called upon to interpret the rival headings in the CTA, Chapter 25 of which covers only specified processes of rough splitting & squaring in respect of marble. The above cited decision, therefore, is not applicable to the facts of this case.

8. In the light of the above discussion, we hold that the imports are classifiable under Heading 68.01/16 of the CTA.9. On the question of validity of import, the learned consultant submits that the items are not consumer goods which directly satisfy human needs without further processing - the slabs are not of uniform size; the edges have to be cut & smoothened before laying on the floor or on walls in order to ensure a perfect, smooth finish. The slabs are not of uniform thickness which is essential for level floors or walls.

The surfaces & edges of the slabs have to be polished before & after laying on floors or on walls. For these reasons, the learned consultant urges us to accept his contention that the goods are raw material validly imported under OGL. The learned SDR counters these arguments by pointing out that, as is evident from the examination report, only 10% of the slabs have uneven edges. The slabs are of uniform thickness & size as seen from the certificate of 8-2-1985 of M/s.

Chandrashekher & Bhagat. It is not necessary for slabs to be cut into smaller size before laying as even large slabs can be used on floors & walls (the Collector has dealt with this aspect & held that the slabs 10' x 5' size need not always be cut into smaller sizes of 2' x 3'); and therefore the slabs are capable of being used directly and hence qualify for consideration as "consumer goods". We see great force in the submission of the learned consultant. Admittedly, some percentage of the slabs have uneven edges which have to be cut & smoothened. The examination report dated 12-3-1984 also says that the slabs as they arc, are not ready for use. Further polishing of the slabs would have to be done after laying on floors or on walls. This further processing will take the imports out of the scope of 'consumer items' covered by Item 93 of Appendix 4. The goods are covered by Sl. No. 16 of Part III - List 8 to Appendix 10 of the AM-84 Policy and have been validly imported under OGL. We uphold the validity of the import.

a) the goods arc to be classified under Heading 68.01/16 of the Customs Tariff Act.

b) the goods have been validly imported under OGL and therefore the confiscation is set aside with consequential relief, if any.