

Collector of Customs Vs. Electrotech

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-15-1991

Reported in : (1991)(33)ECC90

Appellant : Collector of Customs

Respondent : Electrotech

Judgement :

1. Collector of Customs, Bombay has filed an appeal being aggrieved from the order passed by the Collector of Customs (Appeals), Bombay.

The said appeal was received in the Registry on 3rd September, 1984. In column No. 3 of the appeal memo, the date of communication has been mentioned as 2nd June, 1984. Collector (Appeals) had disposed of two appeals by a common order. Thereafter, a supplementary appeal was filed by the appellant and the supplementary appeal was received on 11th September, 1990. An application for condonation of delay was also filed.

2. Shri M.K. Sohal, the learned JDR has appeared on behalf of the appellant and stated that the original appeal was filed within time and delay in the filing of the supplementary appeal be condoned as there is no negligence on the part of the appellant.

3. Shri Suman J. Khaitan, Advocate has appeared on behalf of the respondent. He had opposed the condonation of delay.

4. After hearing both the sides, we were satisfied that the appellant was prevented by sufficient cause in the late filing of the supplementary appeal. The delay in the filing of the supplementary appeal was condoned and the order was pronounced in the open court.

6. Shri M.K. Sohal, the learned JDR pleaded that the respondents had imported Chemcut Model 547-15 Alkaline Etching System vide bill of entry No. 1915/276 and the respondent had claimed assessment under Heading 84.59(2) as a production machinery, whereas the Assistant Collector had made the assessment under Heading 84.59(1). Shri Sohal argued that by etching no commodity is produced and the machine does not produce any identifiable commodity. He has referred to Note 3 of Section XVI of the Customs Tariff. He has pleaded that the correct classification is under Heading 84.59(1) and the Collector (Appeals) had erred in classifying it under Heading 84.59(2).

7. In respect of appeal No. C/2749/90-B2, Shri Sohal argued that the respondent had imported Resco ADF-Stripper 30 vide bill of entry No.2005/72. Shri Sohal pleaded that the main argument of the Collector (Appeals) in allowing the appeal was that the two machines were utilised in the manufacture of a finished product known as printed circuit board and in the order it has been observed that during the process the imported copper clad laminates are printed by them in their factory with circuits by photo process. These printed circuits are plated with silver or gold to improve their conductivity. The chemical used on such printed circuits is then stripped off by the stripper machine and the unwanted copper of the circuits is etched out by the etching machine and the end product thus becomes a finished printed circuit board. Therefore, the machine designed for production of commodity would, therefore, be covered by Heading 84.59(2) of CTA. Shri Sohal pleaded that the Collector (Appeals) has erred. He has pleaded for the correct classification under Heading 84.59(1). Shri Sohal has pleaded for the acceptance of the appeals.

8. Shri Suman J. Khaitan, the learned advocate has appeared on behalf of the respondent. He has relied on the order passed by the Collector of Customs (Appeals). He has pleaded that the machines imported by the respondent fall

under Heading 84.59(2). He reads the order of the Collector of Customs (Appeals) and has pleaded that the Collector of Customs (Appeals) had examined the samples at various stages of manufacture. He has argued that it is not necessary that each machine should produce a different commodity in the market. He has also referred to the grounds agitated before the Collector of Customs (Appeals). He has pleaded that these machines are also for treating metal and printed circuit board is a commodity. He has read grounds of appeal Nos. 8, 9,10,11,12 and 13. He has also argued that similar imports have not been challenged anywhere. He has pleaded for the dismissal of the appeals.

9. We have heard both the sides and have gone through the facts and circumstances of the case. We have perused the catalogue of Chemcut 15-in-Alkaline Etcher. The function of the machine in the pamphlet has been mentioned as designed for alkaline etching. The catalogue indicates the machinery designed for alkaline etching which is used for etching the unwanted copper. The appellants have claimed that the machinery imported is used for manufacture of a commodity. Alternative plea is that the machinery is for treating metals. The other machine imported is Resco ADF-Stripper 30. We have perused the catalogue and the use of the machine is for the removal of aqueous dry films and UV-inks with automatic replenishment and the Assistant Collector's order has discussed that the write-up given by the importer reflects that the function of the machine is to remove the aqueous dry films and UV-inks during the pattern formation on a copper clad laminate. For the proper appreciation Heading 84.59(1) and 84.59(2) are reproduced below :- "84.59 Machines and mechanical appliances, having individual functions, not falling within any other Heading of this Chapter : (2) Machines and mechanical appliances designed for the production of a commodity, machinery for treating metals, wood or similar materials, for stripping and cutting of tobacco leaf or for cutting or rolling tea leaves; machines for mounting card clothing; nuclear reactors. 40%" A simple perusal of the heading shows that 84.59(2) applies to those goods where a new commodity emerges. In the matters before us, the Collector of Customs (Appeals) has mainly relied on the concept of manufacture under the Central Excise Tariff. Relevant extract from the order is reproduced below :- "In other words, such printed circuit boards manufactured by the appellants in their factory serve as intermediate products in the manufacture of

finished electronic equipments. Merely because the product manufactured by the appellants is an intermediate product, does not mean that it is not a finished product. It is very much a finished intermediate product which attracts Central Excise Duty under Item 68 of the CET, after it is manufactured in their factory." The Tribunal had the occasion to deal with the concept of manufacture and production in terms of Section 2(f) of the Central Excises and Salt Act, 1944 and Customs Tariff Heading 84.59(2) in the case of National Small Industries v. Collector of Customs, Bombay reported in 1988 (36) ELT 367 (Tribunal). Para No. 6 from the said judgment is reproduced below :- "6. The contest is almost evenly balanced and both sides have strong cases in their favour. But I think that the scales tilt slightly in favour of saying that there has been a production of a commodity. We are not examining "manufacture" of the kind we run into in central excise where we frequently have to determine whether any activity or a process imparted to a material involved a manufacture so as to bring a finished product into the category of goods manufactured.

Customs heading under our discussion is only confined to whether the machine is designed for production of a commodity. It must not be a machine that simply finishes, trims, levels, polishes, smoothens, a material or a commodity or the workpiece subjected to its operation.

If such is the case, the machine evidently does not produce a commodity but merely completes or finishes a commodity to bring it to a certain state." In the same matter the Tribunal had also held that Heading 84.59(2) of the Customs Tariff Act, 1975 applies to a machine designed for producing a commodity, not a machine simply finishes, trims, levels, polishes, smoothens a material or a commodity. Paras No. 7 and 8 are reproduced below :- "7. The machine imported by National Small Industries, the appellants, produces a rigid board suitable for making cartons. The Assistant Collector says that the laminated sheets by itself cannot be considered a commodity, but besides this bare statement, he supports it by no argument or discussion. It is not unreasonable to say that a rigid board is a commodity and that the machine that produces it from non-rigid sheet and board has produced a commodity, even when the process of production is the simple one or gluing two or three materials together. The heading definition is vague and

undefinitive and lends itself to two opposing interpretations. If votes were to be cast, I think that the motion "the machine produces a commodity" will receive 51% votes, while the opposing motion will receive 49%.

8. It is not illogical to hold that the machine produces a commodity of laminated products suitable for carton making and therefore, I order assessment under subheading (2) of Heading 84.59 of the Customs Tariff. All other actions that result from this shall be taken as expeditiously as possible, as may be necessary on the claim of the importers." 10. In the matters before us, separate invoices were there for both the machines and separate bills of entry were filed and both the machines cannot independently function for the manufacture of printed circuit board. Following our earlier decision, we are of the view of the Collector of Customs (Appeals) was not right in importing the concept of manufacture and production in terms of provisions of Section 2(f) of the Central Excises and Salt Act, 1944. The Collector Customs (Appeals) had examined the samples at various stages of manufacture. We do not have the benefit of the same. Accordingly, we set aside the impugned order and remand the matters to the Collector of Customs (Appeals) to decide the same without importing the concept of manufacture and production in terms of Section 2(f) of the Central Excises and Salt Act, 1944.

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