

Collector of Customs Vs. Ajanta Offset Packaging Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-22-1991

Reported in : (1991)(56)ELT771TriDel

Appellant : Collector of Customs

Respondent : Ajanta Offset Packaging Ltd.

Judgement :

1. These appeals have been filed against the order Nos. 627-628-DLH/84, dated 16th May, 1984 passed by the Collector of Customs (Appeals), New Delhi. Since the issue in both these appeals is common, they are being disposed of by a common order.

2. The facts of the case in brief are that on 17-12-1982 the respondents entered into a contract with the local agent of the German suppliers for the import of Chromograph C-399 colour spanner. The condition of the contract was that the equipment was to be initially imported on behalf of the supplier for display in Pamex TF '83 exhibition to be held in January, 1983 in New Delhi and after closure of the exhibition it was to be cleared for delivery to the respondents after completion of Customs formalities. In pursuance of the contract the respondents established a letter of credit on 21st December, 1983 in favour of the suppliers. On arrival of the goods by air at New Delhi they were cleared free of duty for exhibition purposes against Bill of Entry No. 034 dated 15-1-1983 filed by the local representative of the foreign suppliers. In terms of Notification No. 116/79 the importer executed a bond undertaking to re-export the goods after the exhibition.

After display of the goods in the exhibition, from 10-2-1983 onward the goods remained under customs control. The respondents registered their contract with Bombay Customs House with the object of availing concessional duty applicable to Project Imports under Heading 84.66 of the tariff and arranged for a release advice on 6-6-1983 against the contract from Bombay Customs House in favour of the Assistant Collector of Customs, New Delhi. Therefore, they filed a Bill of Entry on 20-6-1983 for clearance of the goods under Heading 84.66. On 6-9-1983 the Assistant Collector passed an order rejecting the respondents' claim for assessment of the goods under Heading 84.66 on the ground that the essential requirement of registration of the contract prior to the clearance of goods for home consumption had not been fulfilled. However, the Collector (Appeals) set aside the Assistant Collector's order on the ground that the registration of the contract in June 1983, was prior to the clearance of the goods for home consumption against Bill of Entry filed on 20-6-1983 and the initial clearance against Bill of Entry filed on 15-1-1983 being on the condition of re-export after display at an exhibition, could not be deemed as clearance for home consumption.

3. On behalf of the appellants we heard Shri M. K. Sohal, learned JDR. He pointed out that the respondents had entered into a contract with the foreign supplier for the purchase of the goods in question. He contended that the Collector (Appeals) had erred in holding that the goods cleared under Notification No. 116/79, dated 1-6-1979 for display in an exhibition were in the nature of goods in transit. He contended that the impugned goods not having been entered for warehousing had to be deemed as having been cleared for home consumption. He argued that the goods were not classifiable under Heading 84.66 of the CTA since the registration of the relevant contract with the Customs authorities was after the date of clearance of goods for home consumption, against Bill of Entry No. 034 dated 15-1-1983. He contended that from the decision of the Tribunal in the case of Skania Engineers Pvt. Ltd. v. CC, Bombay reported in 1984 ECR 1074 (CEGAT) it follows that clearance of goods for exhibition subject to the condition of re-export amounts to clearance for home consumption.

4. On behalf of the respondents the learned Consultant Shri N. C. Sogani contended that the Collector (Appeals) was justified in holding that the clearance

of goods under Notification No. 116/79 for display in an exhibition subject to the condition of reexport within 6 months does not amount to clearance for home consumption. He stated that the contract between the respondents and the foreign supplier stipulated that goods would be delivered to the buyers only after display at Pamex TF '83 and except for being displayed they would not be used or operated in any manner. He referred to the dictionary meaning of 'consumption' and argued that there being no indication of any utilisation or use of the goods in any manner during the fair, they could not be deemed as having been cleared for home consumption. He contended that after the Pamex TF '83 the goods remained in Customs bond and before acquiring them the respondents were permitted to file a fresh Bill of Entry for regularising the import after payment of duty.

He argued that in respect of the goods the second Bill of Entry filed by the respondents was the only Bill of entry for home consumption. He contended that the decision of the Tribunal in the case of Skania Engineers Pvt. Ltd. (supra) was not relevant since in that case the issues involved were different.

5. We have gone through the records of the case and considered the submissions made on behalf of both the sides. It is seen that in terms of the proviso to Heading 84.66 of the Customs Tariff the classification of goods under the heading was subject to the condition that the contract covering goods was registered with the Customs authorities prior to the order of the proper officer permitting clearance of the goods for home consumption. Hence the main question that arises for consideration in this case is whether the clearance of the imported goods for display in an exhibition on condition of re-export within the 6 months against Bill of Entry No. 034 dated 15-1-1983 filed on behalf of the foreign supplier could be deemed as clearance for home consumption or the Bill of Entry filed on 20-6-1983 by the respondents after registration of their contract of 6-6-1983 was the only clearance of the goods for home consumption.

6. It is seen that Section 46 provides for making an entry in the prescribed form by the importer in respect of any imported goods other than the goods intended for transit or transshipment by presenting to the proper officer a Bill of Entry for home consumption or warehousing.

Further, as provided in Section 47 in respect of any goods entered for home consumption if the proper officer is satisfied that the goods are not prohibited and the importer pays the import duty, if any assessed thereon, or any charges payable under the Act he may make an order permitting the clearance of goods for home consumption.

7. It is evident from this discussion that under the scheme of the Customs Act any imported goods have necessarily to fall in any of the three categories which have been referred to in Section 46 of the Act.

On importation, the impugned goods were neither entered for warehousing nor were they intended for transshipment. It is, therefore, evident that the Bill of Entry No. 034 dated 15-1-1983 filed on importation of the goods was for home consumption and the proper officer had after assessing the goods under Section 17 of the Customs Act in terms of Notification No. 116/79 dated 1-6-1979 passed the order permitting the clearance of the goods. Thus the order passed in respect of the goods covered by Bill of Entry dated 15-1-1983 filed under Section 47 was indisputably an order permitting the clearance of goods for home consumption.

8. During the Course of his oral submissions the learned Consultant Shri Sogani had placed reliance on the dictionary meaning of word 'consumption' and contended that clearance of goods against under Bill of Entry No. 034 dated 15-1-1983 could not be deemed as clearance for home consumption since in terms of the contract between the respondents and the supplier during the display in the exhibition the machines were not to be operated in any manner. In our view this argument does not help the respondents. The import of goods by a foreign company for displaying them in an exhibition for the purpose of generating business undoubtedly results in the goods being put to use after importation.

However, as observed by us earlier, the question whether any imported goods were cleared for home consumption has to be decided only on the basis of statutory provisions in Sections 46 and 47 of the Customs Act, 1962 and not on any other considerations. It has also been contended on behalf of the respondents that after conclusion of Pamex TF '83 the supplier had fulfilled their obligation by delivering the goods to Customs for retention in bond pending re-export and the

second Bill of Entry filed on 20-6-1983 for payment of duty has to be deemed as the only Bill of Entry filed for home consumption in respect of goods. In this regard we find that retention of goods by the Customs authorities after conclusion of Pamex TF '83 did not amount to warehousing of the goods. We also find that there is no force in the appellants contention that the second Bill of Entry filed on 20-6-1983 has to be deemed as the only Bill of Entry for clearance of the goods for home consumption.

There is no provision in the law for filing of a second Bill of Entry for any goods which have been permitted to be cleared for home consumption. Under these circumstances instead of permitting a fresh Bill of Entry to be filed, the proper course for the Customs authorities would have been to collect the duty against the home consumption Bill of Entry already filed and assessed for the goods in question, by making suitable endorsement on it.

9. We do not agree with the learned Consultant Shri N.C. Sogani that the Tribunal's decision in the case of Skania Engineers Pvt. Ltd. v. CC, Bombay 1984 ECR 1074 (Cegat) is not relevant to the issues involved in this case. On the contrary we find that it follows from the following extract from the decision that goods imported for display in fairs conditionally free of duty subject to re-export are cleared against home consumption Bills of Entry:- "The Tribunal is not able to agree with the appellant that the rate of duty applicable should be that on the date of payment. The exemption was applicable to imports which took place after the date of its issue. This import had already taken place but was conditionally cleared free of duty subject to its being re-exported on completion of the Fair. The home consumption B/E which had already been entered was only finalised when the importer decided not to export the goods but to sell them locally. In view of the explicit provision of Section 25(1)(a) of the Customs Act, 1962, there is no alternative but to uphold the order of the Appellate Collector. The appeal is, therefore, rejected." 10. We, therefore, hold that the relevant contract not having been registered with the concerned Customs authorities prior to the order made by the proper officer for clearance of the goods for home consumption against Bill of Entry No. 034 dated 15-1-1983 the impugned goods were not assessable under Heading 84.66 of the Customs Tariff.

11. We, therefore, set aside the order appealed against and allow the appeals.

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