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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-31-1991

Reported in : (1991)LC55Tri(Delhi)

Appellant : Express Industries

Respondent : Collector of Customs

Judgement :

1. This is an appeal filed against the order passed by the Additional Collector of Customs, Bombay.

2. The appellants had filed a Bill of Entry No. 8201/ dated 19-1-1990 for the clearance of 17,500 pieces of flower fibre optic elements. They claimed clearance of the goods under OGL Appendix 6(1) of AM-1988-91 policy as components of Fibre Optical Lamps being manufactured by them as Actual User (Industrial) on the strength of their SSI Registration Certificate issued by the General Manager, District Industries Centre, Thane. The appellants declared the goods as classifiable under Heading 90.01 of the Customs Act read with Customs Notification No. 69/86. A show cause notice dt. 29-3-1990 was issued to the appellants alleging that the goods being Parts/Sub-assemblies of Artificial Flowers were classifiable under Heading 67.02 of the Customs Tariff and were covered by Item No. 13 of Appendix 2(b) of AM-1988-91 of Import Policy. The show cause notice further alleged that the goods were liable to confiscation under Section 111(d) and/or Clause (i) of (m) of the Customs Act, 1962 and the appellants were liable for penalty action under Section 11.2 of the Customs Act, 1962.

3. The appellants contended that the goods imported were optical fibre elements classifiable under Heading 90.01 of the Customs Tariff since they were to be used in conjunction with electric motors and bulbs for the production of electric lamps.

4. In the inpugned order, the Additional Collector rejected the appellants contention and held that the imported goods were Artificial Flowers classifiable under Heading 67.02 of the Customs Tariff and they could not deemed as components of the electric lamps covered by the OGL as per Appendix 6(1) of AM-1988-91 Import Policy.

5. On behalf of the appellants we heard the learned Advocate Dr. Nitin Kantawala who contended that the adjudicating authority had erred in holding that the imported goods were Artificial Flowers. He referred to the relevant notes to the Heading 67.02 of the harmonised system and stated that Artificial Flowers covered by the heading should have resemblance to natural flowers. He produced a sample of the imported goods and contended that they were optic fibre bundles bound at one end and the attached flowers were also made out of optic fibres. He stated that the imported goods were parts of Optic Fibre Lamps in which the optic fibre bundle bound at one end was attached to a rotating base and when current is passed through them they produce light of different colours. He produced a catalogue showing various types of Optical Fibre Lamps and claimed that the imported optic fibre bundles being parts of electric lamps were correctly classifiable under Heading 90.01 of the Customs Tariff and the appellants being Actual Users engaged in the manufacture of Optic Fibre Lamps, they were entitled to import them as components of Electric Lamps under OGL in terms of Appendix 6(1) of AM-1988-89 - Import Policy.

6. On behalf of the Department the learned JDR Shri M.S. Arora contended that the Imported goods have to be deemed as Artificial Flowers falling under Heading 67.02 of the Customs Tariff since they have the shape and appearance of flowers. He referred to the notes to Heading 90.01 of the HSN and contended that the disputed goods being Artificial Flowers made out of optical fibres, they did not fit into the description of any of the items listed as classifiable under that heading. He argued that the imported optical fibres were not classifiable under Heading No.

90.01 as optical fibre suitable for transmission of light for the purpose of illumination since they were neither in the form of plain bundles nor in running length on reels. He reiterated his stand that the imported goods had to be deemed as Artificial Flowers falling under Heading 67.02 of the Customs Tariff and Item No. 13 of Appendix 2B of AM-88-89 Import Policy.

7. It is seen that the disputed goods have been described in the supplier's invoice as "5-Flower Fibre Optic Elements Fastened to Battens CKA" and" 3-Flower Fibre Optic Elements W/O Battens CH-33C and CH-55". In the Bill of Entry filed by the appellants of the goods under clearance have been declared as "5-Fibre Optic Bundles as Components Parts of Domestic Electrical Appliances, viz., Fibre Optic Lamps".

8. On inspection of the sample of the imported goods which was produced before us during the hearing, it was found that the goods consist of a number of fibre optic elements together with few coloured flowers in the form of a bundle bound at one end. The coloured flowers in such bundles are made out of a thin fabric like material created by spraying fibre optic elements with adhesive.

9. The Department's case is that the imported goods are Artificial Flowers covered by Heading 67.02 of the Customs Tariff. In this regard the following extract from note to Heading 67.02 of the Harmonised Commodity and Coding system (HSN) is relevant: "67.02 - ARTIFICIAL FLOWERS, FOLIAGE AND FRUIT AND PARTS THERE OF; ARTICLES MADE OF ARTIFICIAL (1) Artificial Flowers, Foliage and Fruit in forms resembling the natural products, made by assembling various parts (by binding, glueing, assembling by fitting into one another or similar methods).

This category also includes conventional representations of Flowers, Foliage or Fruit made up in the manner of Artificial Flowers, etc.

(2) Parts of Artificial Flowers, Foliage or Fruit (e.g. pistils, stamens, ovaries, petals, calyces, leaves and stems).

(3) Articles made of Artificial Flowers, Foliage or Fruit (e.g.

bouquets, garlands, wreaths, plants), and other articles, for use as trimmings or as ornaments, made by assembling Artificial Flowers, Foliage or Fruit.

The heading includes Artificial Flowers, Foliage or Fruit fitted with a pin or other minor fastening device.

The articles of this heading are mainly used for decoration (e.g. in houses or churches), or as ornaments for hats, apparel, etc." 10. It follows from these notes that Artificial Flowers to be classified under Heading 67.02 should resemble the natural flowers and they should be meant mainly for decoration of houses, churches etc. or as ornaments for hats, apparels etc. As far as the imported goods are concerned, it is seen that they have been described in the suppliers invoice as "5-Flower Fibre Optic Elements Fastened to Battens CKA" and "3-Flower Fibre Optic Elements W/O Battens CH-33C and CH-55". In the Bill of Entry also the goods have been declared by the appellants as "5-Fibre Optic Bundles as Components Parts of Domestic Electrical Appliances, viz., Fibre Optic Lamps." On inspection the sample of the imported goods produced by the appellants during the hearing before us, it was found to comprise of a number of fibre optic elements and a few coloured flowers in the form of a bundle bound at one end. The coloured flowers in the bundle were found to have been made out of a fabric like material made by spraying fibre optic elements with an adhesive. From the catalogue showing various types of Fibre Optic Lamps filed by the appellants, it is seen that the imported goods are used in such lamps.

The appellants have explained that in Fibre Optic Lamps, manufactured by them, the imported fibre optic bundles consisting fibre optic elements and few coloured flowers bound at one end are mounted on a rotating base and when current is passed through the elements they produce coloured light of low intensity.

11. On the basis of these details we are of the view that the disputed goods consisting of fibre optic elements and coloured flowers of such elements in form of a bundle bound at one end, are components of Fibre Optic Lamps and not being in the nature of Artificial Flowers which are commonly used for decoration in homes or as ornaments for hats, apparel etc. their classification under Heading 67.02 of the Customs Tariff is ruled out.

12. In support of their claim for classification of the disputed goods under Heading 90.01 of the Customs Tariff, the appellants have placed reliance on Explanatory Notes to Heading 90.01 of the HSN the relevant extracts from which are reproduced below: "Optical fibre bundles may be rigid, in which case the fibres are agglomerated by a binder along their full length, or they may be flexible in which case they are bound only at their ends. If coherently bundled, they are used for transmission of images, but if randomly bundled, they are suitable only for transmission of light for illumination." 13. It is seen that in terms of these notes, Heading 90.01 of the tariff covers optical fibres in running length when presented on reels and also bundles of such fibres including those which are bound at one end for being used for transmission of light for illumination. In our view the disputed goods in the case before us are not mere optical fibre bundles. They have been given a special shape and form through addition of coloured flowers made out of optical fibres, rendering them fit for use only as components of Optic Fibre Decorative Lamps. The suppliers invoice also describes the imported goods as components of Optical Fibre Lamps and the appellants have claimed that the goods would be used by them for manufacturing Optical Fibre Lamps. Under these circumstances we hold that the goods in question are more specifically covered by sub-heading 9405.99 as parts of 'other electric lamps' falling under sub-heading 9405.40.

14. The imported goods being held by us to be parts of Optic Fibre Lamps, the question whether they would be covered by OGL in terms Appendix 6(1) of AM-1988-91 Import Policy, will have to be decided with reference to the SSI Registration Certificate held by the appellant.

15. In view of the above discussion we order the classification of the goods under sub-heading 9405.99 as parts of other electric lamps, falling under sub-heading 9405.40 and direct that the question whether the goods are covered by QGL may be decided by the Asstt. Collector with reference to the SSI Registration Certificate held by the appellant.

16. In the result, the Additional Collector order is set aside and the appeal is decided by way of remand in the above terms.

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