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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-16-1983

Reported in : (1985)LC302Tri(Delhi)

Appellant : H.A.L.

Respondent : Collector of Customs

Judgement :

1. This is a Revision Application against Order-in-Appeal No.S/49-1330/77-GS dated 27-6-1978 passed by the Appellate Collector of Customs, Bombay, which has been transferred by the Government of India to the Tribunal for disposal under Section 131B(2) of the Customs Act, 1962.

2. A consignment of Ejection Seats, Parachutes and Survival Packs was imported and assessment claimed under ICT Item No. 76 vide B/E No. 241 dated 20-6-1973. However, the assessment of ejection seats was made under Item 76 while parachutes were assessed under Item 53 and Survival Packs under Item 87. On a claim for refund on the grounds that the goods should be assessed under Notification No. 145/58, they were asked to produce a Duty Exemption Certificate and Release Note for the Survival Packs and since no reply was received, the Asstt. Collector rejected the claim as unsubstantiated. The claim was reiterated before the Appellate Collector and a DEC and Release Note were produced in support. The Appellate Collector observed that the certificate does not cover the subject goods as it pertains to puchase order No. PUR.71/PO/0044/6022. He, therefore, rejected the appeal as un-substantiated.

3. In the present appeal it is stated that the contract No. quoted in the DEC by the Ministry of Defence is No. HAL-LD/4530/6-C-PUR/72/0044 whereas the invoices indicate P.O. No. HAL-LD/4530/6-C-PUR/71/P.O./ 0044/6022 and the reasons for variation are as under:- (i) 6022 shown in the invoice is the despatch number of the appellants under which the order was posted to the supplier and, therefore, not mentioned in the order.

(ii) The figure '71' after C-PUR in the invoice is a typographical error and the correct figure is '72' as shown in the DEC as it indicates the year of raising of Purchase Order which is dated 15-4-1972. Moreover, the goods are fully finished parts for use exclusively in Aircraft HF 24 and HJT 16 and as such are entitled for free entry under Notification No. 145/58. The Appellants have enclosed the Exemption Certificate under Notification No. 145 of 10-5-1958 given by the General Manager countersigned by the Ministry of Defence as also a certificate from the Directorate of Technical Development & Production (Air), Ministry of Defence that the Ejection Seats in question are meant for use of HF-24 and HJT-16 aircrafts only. All the goods are stated to be covered by Release Notes numbers EO 396, EO 397, EO 415 & D 4262 which is the sole authority for use of these goods in Aircraft.

In view of this evidence a request has been made to grant the refund of Rs.1,24,219.18.

4. Wg. Cdr. Tandon explained the discrepancy between the numbering of the Purchase Order and the DEC and wanted appeal to be allowed. The Departmental Representative stated that the Purchase Order 0044 dated 15-4-1972 was in respect of 63224.34 whereas the subject consignment was for a value of 10,891.65 and wanted the case to be remanded to the Asstt. Collector for further verification. Shri Tandon explained that the other consignments forming part of this Purchase Order had already been cleared and had been granted the exemption.

5. The Tribunal accepts the explanation for the discrepancy and is of the opinion that there is no reason to doubt the validity and relevance of the Duty Exemption Certificate produced. It, therefore, sets aside the order of the Appellate Collector and allows this appeal with consequential refund.

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