Collector of Customs Vs. Gwalior Rayon Silk Mfg. (Wvg.) Co.

Collector of Customs Vs. Gwalior Rayon Silk Mfg. (Wvg.) Co.

SooperKanoon Citation : sooperkanoon.com/6773

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-11-1991

Reported in : (1992)(59)ELT319TriDel

Appellant : Collector of Customs

Respondent : Gwalior Rayon Silk Mfg. (Wvg.) Co.

Judgement :

1. This is an appeal preferred against the order-in-appeal No.S/49-798/84 CL dated 31-10-1984 passed by the Collector of Customs (Appeals) Bombay.

2. The facts of the case in brief so far as material to decide the issue in this case is concerned that the appellants imported 4 cases of HCL (Hydrochloric Acid) Synthesis unit of combustion chambers. The importers sought amendment of the goods under the Heading 84.17(1) of the Customs Tariff Act, 1975. The Asstt. Collector classified the goods imported under the CTA Heading No. 68.01/16(1) rejecting the importers' claim for classification under Heading No. 84.13/84.17/84.59 on the ground that articles made of graphite could not be assessed under Chapter 84 of CTA, 1975. In appeal, Collector (Appeals) allowed the appeal observing that the imported goods are parts of combustion chamber and therefore, they should have been under appropriate heading under which the combustion chamber itself is classifiable to Customs duty, and accordingly he ordered to clear the goods under the Heading 84.17(1) and that consequential refund be granted. Aggrieved by the said order, the Department has come up before us by way of this appeal.

3. It was contended by Shri S.K. Roy, learned SDR for the revenue that the goods imported viz. lower shells, upper shells gas nozziled etc.

are parts of combustion chambers and since the appellants themselves declared parts of combustion chambers and they are made of graphite, they are excluded from the ambit of Chapter 84 and are correctly classifiable under 68.16 of CTA, 1975 as per note on page 898 of CCCN.He read the note 1(a) under Chapter 84 which said that this chapter does not cover Mill stones, grind stones and other articles falling within Chapter 68. He also drew our attention to the relevant portion i.e. explanation to Heading 68.16 which reads as follows: "16. Articles of Stone or other Mineral substances (including articles of Peat) Not elsewhere specified or included.

This heading covers articles of stone or of other mineral substances, if those articles are not covered by the earlier headings of this Chapter and not included elsewhere in the Nomenclature; it therefore, excludes, for example, ceramic products falling within Chapter 69." 4. Aggrieved for the respondents Shri J.R. Gagrat, submitted that the goods in question are not spare parts but complete chamber with burner.

The equipment under question has exploded was imported along with complete plant for caustic soda in the year 1971 and at that time the duty as applicable on capital goods was also paid. The above furnace got exploded on 1st March, 1981 and for that the respondents made a capital goods application to the Collector of Customs and Central Excise, Delhi and on recommendation of DGTD the capital goods license was granted for import of above machinery. He said that the equipment under question is a regular machinery which is necessary to produce a particular product viz. hydrochloric acid. He drew our attention to the Drawing of the equipment which is already on record explaining that there are three positions in this chamber which makes it a complete chamber by itself burners are fitted inside the chamber to burn the hydrogen with chloride to create hydrochloric acid bases are condensed and parted through the next chamber and it will finally pass through the next chamber in liquid form. He referred to the letter dated 15-7-1982 addressed to the Asstt. Collector in which it was explained in detail about the technical process and function of the machinery to know that it was a regular plant and machinery equipment which is used for manufacture of a product. He said that it may be called as plant or apparatus or appliance or machine for the manufacture of hydrochloric acid. He contended that goods imported as an article made of graphite cannot be excluded under Chapter 84 as it was done by the department since there is a vast difference between an article made of graphite and a plant-machine-appliance made of graphite. While an article made of graphite is to be assessed under Chapter 68, a plant made of graphite is to be assessed under Chapter 84. He referred to the invoice issued by the supplier about the goods in question which was classified under Heading 84.17 and recommendation dated 7-10-1982 issued by the Dy. Chief Controller of Imports and Exports, Bhopal. Further, he drew our attention to the certificate issued by DGTD wherein it was stated that - "The matter has been examined in this office in consultation with the concerned engineering Directorate KT.1s. It is certified that combustion Chamber complete with burner assembly and complete interconnecting Pie + Pipes could be covered under Heading 54.59 of ICT. Customs Authorities at Bombay may kindly be advised accordingly under intimation to this office At CH + The earliest*" 5. We have carefully considered the submissions made by both the sides and perused the records. The Asstt. Collector has rejected the claim of the party that imported goods viz. shells for combustion chamber for classification under Heading 84.13 on the ground they are parts and are made of graphite since Chapter Note 1(a) to Chapter 84 excludes all articles made of graphite. The Collector (Appeals) while allowing the appeal has not given a finding whether it is a graphite machinery or not but proceeded as if it was a part and holding that parts also should have been classified under which the combustion chamber itself is classifiable to customs duty. But since beginning it has been the contention of the party that what they have imported are not spare parts but a complete unit consisting of three parts for combustion chambers. The function and technical process of the unit was explained that what they have imported is an equipment in which the hydrogen is to be burnt with chlorine and thereby a new product to be recovered (hydrochloric acid) is made up of graphite. The very purpose of this material being used for making this particular unit is because of its anti-corrosive nature and further the choice of explosion is rare if made of other material such as cast iron or other metal. This unit is called carbide chamber which is in three places fitted with the burners and other accessories form part of synthetic unit of caustic soda plant. The chamber is a complete unit or so to say an equipment and therefore, the classification should not go on the basis of material of which it is made, but the function it does. The function of these equipment is not controverted by the department but rejected the claim by the Asstt.Collector only on the ground that they were made of graphite. Further there is no dispute that what they have imported is for combustion chambers and Drawing also indicates that the combustion chamber consist of three parts i.e. upper shell, intermediary shell and lower shell along with fittings. Based upon the records and functioning of the imported parts, we are of the opinion that they constitute a complete unit. Next question arises whether this item is complete unit or equipment as such is classifiable under Heading 84.17(1) as contended by the party or under 68.01/16D of the CTA according to the Department.

6. The relevant entries 68.01/16 and 84.17 are reproduced for the sake of convenience.Heading No.Sub-heading No. and description Standard Rate Central Excise of article.

of duty.

Tariff Item.68.01/16 Articles of natural or artificial 22F, 23C, 51 stone, of agglomerated natural or 7. While classifying the item in question, Department is mainly emphasising the Note 1(a) under Chapter 84 which excludes Mill stones, grind stones and other articles falling within Chapter 68. Since Machinery, plant and similar laboratory equipments whether or not electrically heated for the treatment of materials by a process involving a change of temperature such as heating ... are specifically specified under Heading 84.17 and since we are holding that the imported item is a machinery item, we feel this is correctly classifiable under Heading 84.17.

8. We are unable to agree with the contention that the word article in Chapter Note 1(a) would cover machinery and machinery parts thereof and since they are made of graphite, they should be classified under Heading 68.01/16(1).

9. We concur with the arguments advanced by the respondent's counsel that classification No. 84(17) though is a general nomenclature but this is the most suitable classification under which the unit in question can easily be assessed for duty because this is a machinery item, a complete unit by itself specially designed and for the specific function of burning the hydrogen with chlorine and thereby make hydrochloric acid in liquid form and since this carbide chamber is a complete unit, the classification should not go on the basis of material of which it is made but the function it does. We have also taken note of the fact that similar parts of combustion chambers made of graphite which were imported in 1964 by the respondents for their caustic soda plant were assessed under Chapter 84 by the Custom House and the licensing authority had also considered the present imported parts as classifiable under Heading 84.59 in consultation with DGTD.10. In the view we have taken, we uphold the findings of the Collector (Appeals) that the imported items are correctly assessable to customs duty under Heading 84.17(1) and not under Heading 68.01/16(1) of CTA, 1975 and accordingly the appeal filed by the Department is dismissed.