Ahuja Radios and Others Vs. Union of India and Others

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Court : Delhi

Decided On : Nov-28-1986

Reported in : 1987(14)ECC157; 1987(12)LC660(Delhi); 1987(28)ELT329(Del)

Judge : Sunanda Bhandare, J.

Acts : Central Excise Act

Appeal No. : C.W.P. No. 36 of 1974

Appellant : Ahuja Radios and Others

Respondent : Union of India and Others

Judgement :

1. The petitioners who are engaged in the business of manufacture, sale and export of public address equipments popularly known as amplifiers imported 3000 pieces of R.C.A. tubes type 6L6 GC against U.S. Aid import license No. P/SS/1610092/C/XX dated 6th March 1969. According to Clause 'B' printed on the reverse of the import license, the petitioners were to utilise the imported material only in the products i.e. amplifiers, for which the material had been allowed to be imported. According to the Finance Act 1968-69, no excise duty was livable on tubes, transistors and diodes which are specifically meant and imported for use in products than wireless operating receivers. The high power imported valves imported by the petitioners were cleared from the Bombay Customs vide Bill of Entry No. 1262/28. The goods were assessed to customs duty under Item 73(10)

of the I.C.T. at 50 per cent plus Rs. 3/- per piece countervailing duty. The petitioners f aggrieved by thus levy of duty because according to there petitioners no duty was livable on the import of high power amplifiers valves imported by it because these values were meant for the manufactures of amplifiers in the petitioners' own factory. The case of the petitioners was that under Item 73(10) of the I.C.T. customs duty at 50 per cent plus Rs. 3/- per piece countervailing duty could be charged only on wireless receiving sets and not on valves used for the manufactures of amplifiers. The petitioners' shipping agents M/s. Shipping & Travel (Agents) Private Limited thereforee lodged a claim with the Assistant Collector of Customs on 26th February, 1969 for refund of the customs duty levied by the Customs authorities at the time of the clearance of the goods. The claim of the petitioners was rejected by the Assistant Collector of Customs, Bombay vide his order dated 19th February, 1969. Being aggrieved by the order of the Assistant Collector of Customs, Bombay the petitioners through their Shipping agents filed on appeal before the Appellate Collector of Customs, Bombay. However, the Appellate Collector of Customs, Bombay vide his order dispatched on 17th March, 1970 rejected the appeal on the ground that as per catalogue on 'Universal Radio Circuits 1942-1949' the Subject tubes were used in Cassor Model 479 A.C. Radio Receivers and, thereforee the duty was correctly charged. Being aggrieved by this order the petitioners filed a revision application under Section 131 of the Customs Act before the Commission (Revision Applications), Ministry of Finance, Department of Revenue & Insurance, New Delhi which was also rejected on 19.9.1972. The petitioners have challenged the orders of Assistant Collector of Customs dated 26th February, 1969, Appellate Collector of Customs dated 17th March, 1970 and of the Central Government dated 19.9.1972 in this writ petition under Article 226 of the Constitution of India.

2. It was submitted by the learned counsel for the petitioner that the high power valves were imported by the petitioner under an actual users' license for the manufacture of public address equipments namely amplifiers and under the terms and conditions of the import license granted to the petitioners, the petitioners were required to utilise the imported material only for the purpose for which it had been imported and could not use the said material for any other purpose like wireless receiving sets. It was submitted that the petitioner firm did not manufacture

wireless receiving sets in its factory and had no license to manufacture the same and thus it could not use the imported valves for the manufacture of wireless receiving sets and thus the import duty charged on the basis that these valves could be used for the manufacture of wireless receiving sets was not justified. Learned counsel relied on the following notification No. 3/69, dated 11th January, 1969 in support of his contention that the valves which were imported by the petitioners were exempted from customs duty :-

'Provided that these parts of wireless receiving sets shall be exempted from the whole of the duty livable therein if used in the manufacture of electronic equipment other than wireless receiving sets falling under Item No. 33A of the 1st Schedule.'

3. Learned counsel submitted that there was no evidence available on record to show that these tubes were being used in Cassor Model 479 A.C. Radio Receivers and even if they could be used no duty could be charged because the petitioners had an actual users license for import of these tubes for the manufacture of amplifiers.

4. I find substantial force in the contention of the learned counsel for the petitioners that under the notification dated 11th January, 1969 these parts would be exempted from the whole of the duty if they were used in the manufacture of electronic equipment other than wireless receiving sets falling under Item No. 33A of the First Schedule and thereforee, it was first necessary to find out for what purpose these parts were actually used. If they were used for the manufacture of wireless receiving sets failing under Item No. 33A of the First Schedule duty as provided under Item No. 73(10) of the I.C.T. at 50 per cent and Rs. 3/- per piece countervailing duty would be leviable. However, if these parts were used for the manufacture of electronic equipment than no duty would be livable at all. Since the petitioners had imported these parts under an actual users license and the petitioners manufactured only amplifiers in their factory and had no license to manufacture wireless receiving sets in the very nature of things they could not have used these parts for the manufacture of wireless receiving sets falling under Item 33A of the First Schedule. Moreover, there was a specific condition in the import license that the parts would be used only for the purpose for which the

material had been imported i.e. for the manufacture of amplifiers. Thus, the petitioners could not have utilised or used this parts for the manufacture of any other thing excepting amplifiers. Both the Appellate Collector of Customs in the appeal as well the Ministry of Finance in the revision application in may opinion were not holding that since these parts could be used for the manufacture in Cassor Model 479 A.C. Radio Receivers, any conditional exemption application after importation would not entitle them to get an exemption from duty. Since the goods were imported under an actual users license for the manufacture of particular goods and also because they were covered under the notification dated 11th January, 1969 issued under the Finance Act the petitioners were entitled to the exemption.

5. In the result the petition is allowed. The impugned orders dated 26th February, 1969, 17th March, 1970 and 19th September, 1972 of the Assistant Collector of Customs, Appellate Collector of Customs and of the Central Government respectively are set aside. The petitioners are entitled to get refund of the excise duty of Rs. 9000/-. The amount to be paid within 3 months from today. No costs.