Collector of Customs Vs. Emco Electronics

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-02-1993

Reported in : (1994)(71)ELT191TriDel

Appellant : Collector of Customs

Respondent : Emco Electronics

Judgement :

1. The issue for determination in the above appeal is eligibility or otherwise of Electronic repair system imported by the appellants to the benefit of exemption under Notification No. 185/76 dated 2-8-1976.

2. The brief facts of the case are that the appellants imported a system for Electronics repair MIT-4 MATR-3025257 under Bill of Entry of 8th November, 1989. The goods were allowed to be cleared in terms of Notification No. 185/76. Subsequently, as it was noticed that the benefit of the notification was not available to the goods, a show cause notice was issued proposing levy of duty of Rs.23 lakhs. The Adjudicating authority denied the benefit of notification and confirmed the demand. The lower Appellate authority confirmed the findings of the Assistant Collector holding that Notification No. 185/76 is applicable to the goods of the nature specified in Article II of the Geneva Convention dated 7-11-1952 and did not cover the goods of the nature specified in Article III thereof under which the imported goods were classifiable. Hence this appeal.

3. We have heard Shri. J.S. Sinha, learned Advocate for the appellants and Sh. B.K. Singh, learned DR. We see force in the contention of the appellants that the distinction sought to be drawn between the goods covered under Article II and Article III of the Geneva Convention is not relevant for the purpose of determining the eligibility to the benefit of Notification No. 185/76. Article II of the Convention reads as follows - "Exemption from import duties for samples of negligible value: 1.

Each contracting party shall exempt from import duties samples of goods of all kinds imported into its territory, provided such samples are of negligible value and are only to be used for soliciting orders for goods of the kind represented by the samples with a view to their importation. In determining whether samples are of negligible value, the Customs authorities of the territory of importation may consider the values of the individual samples or the aggregate value of all the samples in one consignment. The values of consignments sent by a consignor to different consignees shall not be aggregated for the purpose of this paragraph even though the consignments are imported at the same time.

The Customs authorities of the territory of importation may require that as a condition of their being exempted from import duties in accordance with para 1 of this article, samples shall be made useless as merchandise by marking, tearing, perforation or other treatment, but not, however, so as to destroy their usefulness as samples" "Temporary duty-free admission of other samples: 1. For the purposes of this article, the term 'samples' means articles which are representative of a particular category of goods already produced or are examples of goods the production of which is contemplated, on condition that they: (a) are owned abroad and are imported solely for the purpose of being shown or demonstrated in the territory of importation for the soliciting of orders for goods to be supplied from abroad; (b) are not sold or put to normal use except for purposes of demonstration or used in any way for hire or reward while in the territory of but does not include identical articles brought in by the same individual, or sent to a single consignee, in such quantity that, taken as a whole, they no longer constitute samples under ordinary commercial usage." 4. Notification 185/76 exempts 'samples of the goods which are exempt from import duties under and in accordance with the International Convention to facilitate the importation of commercial samples and advertisement material drawn up at Geneva and dated 7th November, 1952, from the whole of Customs duty and Additional duty leviable. The Notification is not restricted to goods falling under Article II of the Convention. We therefore, hold that the appellants are entitled to the benefit of notification. Further, the goods have been permitted to be re-exported and therefore, the demand of duty is no longer sustainable.

We, therefore, set aside the impugned order and allow the appeal with consequential relief.