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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-10-1995

Reported in : (1995)(77)ELT321TriDel

Appellant : M.A. Export

Respondent : Collector of Customs

Judgement :
1. M/s. M.A. Exports of Delhi have filed this appeal against the order of Addl. Collector of The Addl. Collector in his order had held : - "8. I order the assessable value under Section 14 of the Customs Act, 1962 be determined as Rs. 2,00,000/- (Rupees Two lakhs only).

CIF Additional Duty of Customs under Section 3 of the Customs Tariff Act, 1975 shall be leviable in respect of the sizes that tally, as per the Notification No. 41/89-CET and in respect of the other sizes as per CET Tariff under heading 4011.99. I order confiscation of the goods under Section 111(d) of the Customs Act, 1962. However, I give option to the importer to redeem the same on payment of fine of Rs. 1,00,000 (Rupees One lakh only). I also impose penalty of Rs. 20,000/- (Rupees twenty thousand only). The fine should be paid within one month from the date of receipt of the order. The penalty should be paid forthwith." 2. Briefly stated the facts of the case are that M/s. M.A. Exports filed Bill of Entry describing the goods as rubber tyres (casing for retreading) and sought clearance thereof against EXIM Scrip. On examination the goods were found to be old and used tyres. Fair value of the tyres was worked out to be Rs. 2,00,000. In terms of Clause 53(iii) of

the Import Trade (Control) Order, 1955, licence can be granted only for import of new goods other than disposal goods. As the goods in the instant case were found to be old and used, it was felt by the Department that the EXIM Scrip produced were not valid for the import of the goods. It was also felt that CV Duty was leviable on the imported goods. The importer waived show cause notice and sought personal hearing. During personal hearing, it was claimed by the importer that under Public Notice No. 172-ITC(PN)/90-93 dated 4-7-1991, the subject goods should be considered as raw materials and sought clearance thereof under Chapter Heading 4012.90. There was no dispute regarding classification of the goods under Customs Tariff Chapter Heading 4012.90. But the dispute centred round the CVD leviable. It was argued by the appellants that tyres for retreading do not figure in CE Tariff and therefore Countervailing Duty shall not be leviable; that CV Duty if charged as per CE Tariff Notn. will be staggering 800% which does not appear to be the intention of the legislature. It was, therefore argued by the appellants before the adjudicating authority that since the goods were old and appellants before the adjudicating authority that since the goods were old and used tyres and not manufactured by them, Countervailing Duty will not be leviable on the goods.

3. Shri B.D. Kariya, the ld. Advocate appearing for the appellants submitted that used tyres which fall under Chapter Heading No. 4012 of the Customs Tariff would fall under Appendix 2(B) 172 or Appendix 2(B) 174 which reads "All defective/scrap material as well as cuttings of items appearing in Appendix 2-Part B" or Appendix 3(A) 443 and Appendix 6 List 8 Part 576; that the appellant was entitled to import and get clearance of the goods under Appendix 3(A) 443 of the Import Policy; that the judgment quoted at para 3 in the case of Khandelwal Metal and Engg. Works reported in 1985 (20) E.L.T. 222 was not applicable to their case; that the goods imported by them were available in India and that what they had claimed was that they were not manufactured product and therefore they were not chargeable to any CE Duty; that the appellant had claimed clearance of the goods as raw materials under Appendix 3(A) against EXIM scrip; that the imported goods can be cleared under Appendix 3(A) Item 443.

4. On the question of valuation, the ld. counsel submitted that the Addl. Collector rejected the invoice value without assigning any reason; that the Addl. Collector has not complied with the requirements of the Valuation Rules and has not cared to consider the various decisions of the Tribunal on the subject in so far as the non-acceptance of the transaction value is concerned; that the value in the instant case has been arrived at by inspection of an appraiser and this value has been appraised after adopting estimation of the average use of the tyres which was placed at 10,000 kms. The ld. counsel therefore, submitted that the method adopted is an incorrect one, and that the orders confirming the value of the goods at Rs. 2,00,000/- may be quashed.

5. On the question of countervailing duty, the ld. counsel submitted that no reasons have been assigned for placing the goods as new tyres under CE Tariff 40.11 as admittedly the tyres were old and used ones ana according to Indian Trade Classification, should be classified as waste, parings and scrap under Chapter Heading 40.04 of the Central Excise Tariff Act, 1985.

6. Shri Sharad Bhansali, the ld. SDR reiterating the findings of the lower authorities submitted that the Hon'ble Supreme Court in their judgment in the case of Khandelwul Metal Engg. Co., reported in 1985 (20) E.L.T. 222 had held that CVD under Section 3(1) of the Customs [Tariff] Act could be levied on the brass scrap when imported because the taxable event is import of the goods into India and not their manufacture; that the duty referred to in the Section 3(i) of the Customs [Tariff] Act, 1975 is, therefore, leviable even if the imported goods are not Customs [Tariff] Act manufactured in India or are not manufactured in India. The ld. SDR therefore, submitted that even if old and used tyres are articles which are not manufactured in India, countervailing duty under the Customs Tariff Act will be considered as leviable equivalent to Excise duty leviable on like articles if manufactured or produced in India; that in the instant case the classification for the used and old tyres will be under Chapter Heading 4011.99 of the Central Excise Tariff. Further Notification No. 41/89 specifically gives a sizes the rate of duty mentioned in the Notn. will be applicable for the notification shall attract the duty at the Tariff rate. On the question of assessment of the imported goods under Central Excise Tariff Heading 40.04, the ld. SDR submitted that this Heading applies only

to such goods which are not usable as such because of cutting up, wear or other reasons. It was also pleaded that though the tyres were old and used, they were usable.

7. Heard the submissions of both sides and considered them. We find that there are three issues for determination before us. The first issue is whether the imported goods could be imported under Appendix 2(B)-172 or Appendix 2(B)-174 or they could be imported under Appendix 3(A) 443 and Appendix 6 List 8 Part 576.

8. The second issue was whether countervailing duty could be levied on the imported goods by classifying them under Chapter Heading 4011.99 of the CETA, 1985 and rates prescribed under Notn. No. 41/89, dated 1-3-1989 could be charged for the tyres of specific sizes and at the Tariff rate for the tyres and tubes wherever the size was not specified in Notn. No. 41/89.

9. The third issue is whether the acceptance of Rs. 2 lakhs as the value of the goods by the adjudicating authority was in accordance with Rules.

10. On the first issue, we observe that the adjudicating authority has precisely dealt with the issues in paras 3,4 and 5 which are reproduced below for the sake of proper appreciation.:- "3. I have carefully gone through the facts of the case. Firstly, there is no dispute regarding classification under Customs Tariff under Heading 4012.90 The dispute is regarding CVD leviable. The argument advanced by the importer is that for manufacturing products, no CVD will be leviable. However, this argument has been negated by the Hon'ble Supreme Court in their judgment reported at 1985 (20) E.L.T. 222 in case of Khandelwal Metal and Engineering Works v. U.O.I. The Hon'ble Court held that the Brass Scrap is leviable to CVD under Section 3(1) of the Customs Tariff Act, 1975, because the taxable event is import of the goods into India and not their manufacture. The duty referred to in the Section 3(1) of the Customs Tariff Act, 1975 is therefore leviable even if the imported goods are not capable of being manufactured in India or not manufactured in India. Therefore, even if old and used tyres are not articles which are manufactured in India. For the purpose of levy of CVD under Section 3(1) of the Customs Act, 1975 it will be considered as leviable to Additional duty of

Custom equivalent to Excise duty leviable on like article if manufactured or produced in India. In the present case, the like article will be new tyres and accordingly for the purpose of Additional duty of Customs, the classification for the used and old tyres will be under Chapter Heading 4011.99. Since the Notification No. 41/89 specifically gives sizes, the rate of duty as mentioned in the Notification will be applicable for the sizes which specifically tally. Since some of the sizes are not covered under this Notification of Central Excise No. 41 /89-CET and there is no other exemption notification of Central Excise granting un-conditional exemption. The other sizes shall attract the duty at the tariff rate. The subject goods will not fall under Central Excise Tariff Heading 40.04 because the said heading applies only to such of 'the goods which are not usable as such because of cutting up, wear or other reasons. The subject goods are usable as Tyres though old. The importer has claimed the subject goods under OGL at S.No. 576 as 'raw material' as cut tyres/tubes.

This entry is as undenused/scrap rubber tyres/rubber tubes cut in (each tyre has to be cut in before it is shipped from the Export Country or before it is cleared from the Customs authority)- engaged in reclaiming the rubber tyre." 4. In the present case the subject goods have not been subjected to cut before the shipment and further, the importer is a trading company and not an actual user engaged in reclaiming the rubber tyres. Therefore, entry at S. No. 576 of Appdx 6 List 8 Part I is not applicable.

5. The next submission of the importer is that according to the policy based on H.S.N. classification it is seen from the import licensing policy the subject goods will fall under Heading 4012.90 00 90 as 'others' which fall under Appdx. 3A Sr. No. 443. The Appdx.

3A entry 443 excludes.

"Oilseals-bushings-overrings and tyres/tubes (including flaps in equal nos.) for automotive application." " On a perusal of the requirements of the ITC Policy, we find that the items were not covered by any of the Appendices claimed by the appellant. We do not see any reason in this respect to differ with the findings of the adjudicating authority which are reproduced above. We, therefore, hold that the

subject goods fall under Appendix 2(B) which required specific licence. As no specific licence was produced by the appellants, we hold that the confiscation of the goods under Section 111(d) is maintainable in law." 10A. For purpose of levy of countervailing duty, the Revenue relied on the decision of the Hon'ble Supreme Court in the case of Khandelwal Metal and Engineering Works reported in 1985 (20) E.L.T. 222. The relevant paragraphs of the Hon'ble Supreme Court's decision in this case contained in paras 7, 8, 9, 10 and 37 are reproduced herein: - * * * * * * * 10B. From the above, it is clear that CVD or the Additional duty of Customs shall be chargeable on the imported goods, and we hold accordingly.

11. On the question of not accepting the transaction value of the goods, we find that the adjudicating authority has in his order simply said "I order the assessable value under Section 14 of the Customs Act to be determined as Rs. 2 lakhs CIF". No evidence has been brought on record as to why the transaction value indicated by the appellants in the Bill of Entry was not accepted. The adjudicating authority has simply gone by what valuation was done by the Customs Appraiser. No reasons have been assigned as to why the value declared in the Bill of Entry was not accepted nor any evidence has been brought on record to show that the fair value of the goods at the time and place of importation was Rs. 2 lakhs. In the absence of any documentary evidence or any cogent reasoning given by the adjudicating authority for not accepting the transaction value, we hold that the adjudicating authority had acted arbitrarily. Having regard to this fact, we accept the value as declared by the appellants in the Bill of Entry and the invoices covering the imported goods.

11A. The impugned order is accordingly modified in terms of the above findings and the appeal is disposed of accordingly.

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