Jayman Industries Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-31-1995

Reported in : (1995)(79)ELT284TriDel

Appellant : Jayman Industries

Respondent : Collector of Customs

Judgement :

1. This is an appeal against the order dated 31-1-1995 passed by the Collector of Customs (Appeals), Bombay. The appellants imported a consignment of 3800 reels of Linen Sutures (Cardio Vascular Sutures) and filed Bill of Entry No. 464, dated 8-4-1994 in which they sought duty free clearance of the goods under Notification No. 208/81 which specifically covers Cardio Vascular Sutures. The appellants were served with a show cause notice asking them to show cause as to why exemption under Notification 208/81 should not be denied in respect of the imported goods on the grounds that the goods being non-sterile sutures they could not be deemed as Cardio Vascular Sutures. The appellants denied the allegation in the show cause notice and claimed that the imported goods were Cardio Vascular Sutures covered by Notification No.208/81. In support of their contention they placed reliance on the letter dated 12-7-1993 from the Director General of Health Services which stated that "Silk Sutures" and "Linen Sutures" are non-absorbable sutures used in Cardio Vascular Surgery and as such they were covered under the Entry "Cardio Vascular Sutures" listed at Sr. No. 3 of Notification No. 208/81-Cus. However, by his order dated 16-9-1994 the Deputy

Collector on the basis of an enquiry made from M/s. Johnson & Johnson Ltd. held that the imported goods could not be deemed as Cardio Vascular Sutures covered by Notification No. 208/81 since Cardio Vascular Sutures have to be sterile ready to use condition and must be available as eyeless needle sutures. Being aggrieved by the order passed by the Deputy Collector, the appellants preferred an appeal before the Collector (Appeals) who rejected the appeal on the grounds that according to the literature available in the standard medical text books Cardio Vascular Sutures are required in surgical procedures like Coronary Artery Bypass operations on the valves of the heart etc. and standard requirement of such sutures is that they must be in sterile ready to use form and must be non-traumatic i.e., available as eyeless needle sutures.

2. On behalf of the appellants, Shri J.C. Patel, Advocate appeared before us. He submitted that the Collector (Appeals) had erred in holding that the imported goods were not Cardio Vascular Sutures covered by Notification No. 208/81. The Chief Medical Officer in the office of the Director General Health Services in his letter dated 12-7-1993 had clarified that the matter had been examined by the Directorate in consultation with the panel of experts who had opined that silk sutures and "Linen Sutures" are non-absorbable sutures used in cardio vascular surgery and as such they would be covered by Notification No. 208/81-Cus. He added that in passing the impugned order the Collector (Appeals) had overlooked the earlier Order-in-Appeal No. 617/93-BCH, dated 20-10-1993 passed by the Collector of Customs (Appeals), Bombay holding identical goods as "Cardio Vascular Sutures" eligible for exemption under Notification No.243/78-Cus., dated 26-12-1978. The Collector (Appeals) had not disclosed the literature on the standard medical text books on which he placed reliance for the purpose of determining the exact nature and qualities of Cardio Vascular Sutures. He contended that under these circumstances and in view of the facts that in the case of imports of identical goods by certain other parties the Collector (Appeals) vide his Order No. 617/93-BCH, dated 20-10-1993 had taken a contrary view in favour of the importers. He pleaded that the matter may be remanded to the original authority viz. Deputy Collector of Customs (now Deputy Commissioner of Customs) for re-adjudication after taking into account the various decisions passed by the Collector (Appeals) from time to time. He prayed that while remanding the

matter the concerned authority be asked to expedite the decision since the goods had been under detention for a considerable period.

3. On behalf of the respondents, Shri Mohan Lal, JDR reiterated the findings of the Collector (Appeals) in the impugned order. He however stated that he had no objection as regards the remand of the matter for de novo adjudication in view of the conflicting orders passed by the Collector (Appeals).

4. We have examined the records of the case and considered the submissions of both sides. We find that in the impugned order the Collector (Appeals) has not disclosed the particular literature or standard medical text books on which he had placed reliance for determining the exact nature and the use of cardio vascular sutures. It is also seen that while arriving at his finding the Collector (Appeals) had not taken into account the Order No. 617/93, dated 20-10-1993 wherein similar goods were held as eligible for exemption under Notification 243/78, dated 26-12-1978. Having regard to these facts we set aside the impugned order and remand the matter to the Deputy Commissioner of Customs for re-adjudication of the case in accordance with law. We direct that before deciding the matter the appellants should be granted personal hearing. Since the goods are reported to be under detention we would appreciate if the matter is disposed of within two months of the date of receipt of this order.