

Sanjay Industries Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-04-1995

Reported in : (1996)(86)ELT70Tri(Mum.)bai

Appellant : Sanjay Industries

Respondent : Collector of Customs

Judgement :

1. This appeal is directed against the Order-in-Appeal No. 1445/87BCH, dated 24-3-1987 of the Collector of Customs (Appeals), Bombay confirming the Order-in-Original No. S/10-58/86D, dated 10-3-1986 of the Deputy Collector of Customs, Group D, Bombay, ordering confiscation vide Section 111(d) of the Customs Act, of the consignment of 175-kgs of brass wire (extrusion quality in coil annealed) dia 6 mm round valued at Rs. 2,66,465/- granting option to pay fine of Rs. 1,00,000/- in lieu of confiscation.

2. The appellants imported the aforementioned consignment and sought clearance under OGL, vide Appx. 6 List 8 Part I Sr. No. 512 of the Policy AM 1985-88. The same was objected to, on the ground that the Brass Wire fell under Sr. No. 459 of Appx. 3 Part A of the same policy.

Query memo was issued, in reply to which it was submitted that the brass wire imported were without any flux and were meant for making brass strips and that the Entry No. 459 of Appx. 3A related only to electrode wires. The explanation was not accepted, and on waiver of issue of the Show Cause Notice, the matter was

adjudicated upon, and the impugned order was passed, which stood confirmed by the Collector (Appeals).

3. Shri Paresh Joshi, the Id advocate for the appellant has pleaded that Entry No. 459 of Appx. 3A of the Policy Book is specific for brass and bronze electrode rods/wires, and would not stand attracted for any other type of wires, and the subject goods being non ferrous alloy, would stand covered under Appx. 6 List 8 Part I Sr. No. 512. In his submission, this falls within the category of castings and the appellants being the Actual User (Industrial), are eligible to import the same under OGL. The Id. advocate has also referred to the observation of the Collector (Appeals) in the concluding paragraph of the Order-in-Appeal, to plead that even the said authority does not hold it as conclusively proved that the item would fall within Entry No. 459 of Appx. 3A and has used the words "is capable of being interpreted" and has further observed that the importer ought to have obtained clarification vide Para 23(3) of the Policy Book AM 1985-88.

He pleads that necessity to seek clarification could arise only when some doubt exists, and the observation by the Collector (Appeals) shows that he too, is not convinced with the objection raised by the Customs authority.

4. Mr. Krishnamurthy, the Id. JDR has, however, pleaded that, the wires imported are extrusion quality, showing that they are not the castings and as such clearance under Entry No. 512 of Appx. 6 List 8 Part I is not possible. He refers to Entry No. 515 in the same appendix to plead that going by analogy, wires only of thinner size are taken as importable under OGL. He further pleads that Entry No. 459 in Appx. 3A, should mean wires of all types and the prefix electrodes, by itself cannot be construed as to qualify the type of wires as falling within App. 3A.5. Mr. Joshi, in reply has submitted that the wires are also described as Annealed and the annealing process could be undertaken only on castings and as such the objection raised cannot be sustained.

6. Considering the submissions made, and going through the records, there is no allegation as to misdeclaration of the goods, and as such the goods imported are brass wire extrusion quality coils annealed of 6 mm diameter in round shape. Entry No. 459 of Appx. 3A of the Policy Book AM 1985-88 reads : There is no

punctuation mark like coma, between the words "electrods" and "rods/wires" and as such plain reading of the entry clearly indicates that, what is covered under the said entry is electrode rods and electrode wires. It therefore, cannot be said that the said entry is intended to cover all types of wires. Admittedly the wires imported are not electrode wires and as such, that portion of the objection raised cannot be sustained.

7. The basic objection raised however, is that the item imported would not fall within Appx. 6 List 8 Part I Sr. No. 512, as has been claimed.

The Bill of Entry filed by the appellants also mentions the same entry.

8. Open General Licence (OGL) is also a type of licence, available to those who have also been categorised as eligible importers in Appx. 6 itself, with a stipulation that such of the persons could import such of the specified items, without any specific licence individually obtained in their name. When any item is claimed to be importable under OGL, it has to be ensured that the same falls within the ambit of the specific entry made in the said Appx. To put it the other way, it is not open to the party importing to plead that merely because, an item does not figure in any other Appendices of the Policy Book, prohibiting restricting or regularising the import, it should be deemed to have been importable under the OGL. In the instant case, therefore, it is not enough for the appellants to merely satisfy that the item does not fall within Entry No. 459 of Appx. 3A, but they have to further establish that the same falls within the Entry No. 512 of Appx. 6 List 8 Part I. As indicated hereinabove, this is the basic objection against clearance, and as such, it may not be available for the appellants to plead that by overruling of the objection raised, they have become eligible to get the clearance under the policy provisions as claimed by them.

9. Entry No. 512 in List 8 Part I of Appx. 6 of the Policy Book AM 1985-88 "Non ferrous alloys, ingots, castings and forgings other than those elsewhere specified". Brass is a non ferrous alloy of copper and zinc but what requires to be considered is whether anything falling within the category of non ferrous alloy is made permissible for import under the said entry or whether the same is circumscribed by specific items listed therein. With the punctuation coma placed between the

words "alloy" and "ingots", if anything falling within the non ferrous alloy is taken as permissible under the first part, then either the later entries would be rendered redundant or could be read as permitting import of ingots, castings and fabrications irrespective of whether they are non ferrous. Further Entry No. 514 in the same list reads "Phosper Bronze sheets/strips" and Bronze also falls within the category of non ferrous alloy of copper and tin, and would stand covered under Entry No. 512 as non ferrous alloy. This, obviously could not be the intention, and ostensibly the same does not appear to be so.

The only interpretation, therefore, is that what is covered under Entry No. 512 is non ferrous alloy in the form of ingots, castings and fabrications, provided they are not elsewhere specified.

10. Non ferrous alloy in the form of wires is not figuring therein. A plea however is raised that wires fall within the category of "casting". The process of "casting" is a distinct type of process of moulding, and is different from the process of extrusion. The invoice as also the entry in the Bill of Entry, clearly indicates that what is imported are the brass wires, extrusion quality, and in absence of any data to show the contrary, the description has to be read as wires drawn by process of extrusion. Under the circumstances, the item imported cannot be construed as a 'casting'.

11. An attempt is made to show that the item is 'annealed' and the process of annealing could be undertaken only on the castings.

Annealing is the process of toughening metal by heating and slow cooling and there is nothing to indicate that it cannot be used in the process of extrusion or that item brought out by any process of extrusion cannot be annealed.

12. From this, therefore, it appears that the brass wires imported would not fall within the ambit of Entry No. 512 of Appx. 6 List 8 Part 1 of the Policy AM 1985-88 and hence refusal to clear the goods imported under the said provisions is justified.

13. An alternate plea raised is that the quantum of redemption fine assessed, to the extent of 40% of the CIF value, is too excessive and disproportionate. The appellants are actual users, and there is also no allegation that the goods were meant to be diverted elsewhere. It is probable that the Entry No. 512 of Appx. 6 List 8 Part I may have been misconstrued by them, and personal penalty is also not imposed. The appellants being the actual users, therefore, some reduction in the quantum of redemption fine appears justified. The fine in lieu of confiscation is therefore reduced to Rs. 40,000/- (Rupees Forty thousand only).

14. The appeal is thus partly allowed and while order of confiscation is sustained, the quantum of fine in lieu of confiscation is reduced to Rs. 40,000/-(Rupees Forty thousand only). Consequential relief to follow.

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