Commr. of Cus. Vs. Appollo International

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-06-1996

Reported in : (1996)(88)ELT477Tri(Mum.)bai

Appellant : Commr. of Cus.

Respondent : Appollo International

Judgement :

1. In the order impugned in the appeal, Commissioner has held that the staple pins imported by the importer, the respondent in this appeal, were entitled to clearance under the special import licence. The Department seeks to challenge this finding on the ground that the goods are "consumer goods" as defined in the Policy and cannot permit to be imported under the special import licence produced.

2. It is first contended by the Departmental Representative that the reliance by the Commissioner on the Specification of staple pins in the Import Export Policy aligned on the specification is misplaced, because this classification is not in the nature of amendment of the policy cannot be part of the Import Policy. The Commissioner himself has not accepted that classification in this publication as part of the policy as he refers to this classification before referring to the fact that the policy based on the clearance is permissible. It is next contended that at the relevant time that the import of "office stationery, excluding pins, clips, staplers and writing instruments of all types", listed at Serial No. 57 of Appendix 35 was permissible under special imprest licences. Since staple pins are not included in this list and do not specifically figure elsewhere in the Appendix their import cannot

be considered against the special imprest licence. The Departmental Representative laid stress on the fact that the word "pins" would cover staple pins also. Staples of the size in question are extensively used in offices, and can legitimately be considered to be office stationery. We are not persuaded by the argument that the word "pins" would cover staple pins too. The Concise Oxford Dictionary defines a pin as "a small thin pointed piece of esp. steel wire with a round or flattened head used for holding things in place. The dictionary separately defines staple as "a U shape metal bar staple or piece of wire with pointed ends for driving into securing or fastening together." The meanings of the two terms in the Chamber's Dictionary are as follows: Pin : A sharp pointed piece of wire with a rounded head to fastening clothes etc.

Staple: A U shape rod or wire for driving into a wall, post, etc. as a fastening, a similarly shape piece of wire that is driven to sheets of paper and compressed to fasten them together.

It is clear, therefore, that a pin is different from a staple although there may be some practice of referring to the latter as a staple pin.

The expression "pins" occurring cannot be considered to include staples and, therefore, the entry does not exclude staples. Since staples are an item of office stationery, they would be entitled to be imported under Serial No. 57 at Appendix 35.

3. A related argument was advanced by the Departmental Representative that since the entry prohibits entry of staplers it must follow that staples which can only be used in conjunction with staplers are also prohibited. This conclusion does necessarily follow. Various factors are taken into account where a particular item is to be permitted import and if so under what conditions. The duty calculated does not take into account these various factors. It may be that while staplers are indigenously manufactured, staples are not or the quantity is insufficient to meet the demand. This is a matter of conjecture. What is clear is that if the policy makers had wanted to exclude import of staplers under the heading they would specifically have said so. This not having been done we cannot import the word into the exclusion clause of the rules.

4. The advocate for the respondent had contended that import of staple pins would be permitted under open general licence and requested decision on this point. He cited the judgment of the Madras High Court in East West Exports v. Assistant Collector of Customs -1993 (68) E.L.T. 319 followed by Madras Bench of this Tribunal in Continental Exporters v. Commissioner of Customs - 1966 (64) ECR 305. However the issue before the Commissioner (Appeals) was not whether the goods were entitled to clearance under OGL. Although this claim was made before the Assistant Commissioner, it would appear that it was not persued, as the importer tendered a special imprest licence for clearance of the goods, which the Assistant Commissioner did not accept. The issue for decision before the Commissioner (Appeals) was only whether the goods would be covered by the licence issued. In view of this the question whether the goods could be imported under OGL is not one which we are called upon to answer.