(1986) 11 CAL CK 0006

In the Calcutta High Court

Case No : Appeal No. 334 of 1978 and Matter No. 948 of 1977

Collector of Customs and Others	APPELLANT
Vs	
Bengal Electric Lamp Works Ltd.	RESPONDENT

Date of Decision : 26-11-1986

Acts Referred:

Citation : (1987) 28 ELT 210

Hon'ble Judges : Bimal Chandra Basak, J;Bhagabati Prasad Banerjee, J

Bench : Division Bench

Judgement

Bhagabati Prasad Banerjee, J.—This appeal arises from the judgment and order dated 10th August, 1978 passed by the learned Trial Judge by which the learned Judge made the Rule absolute and quashed the order dated 17th February, 1977 which was annexure ''C'' to the main writ application and restrained the respondents from assessing the goods imported by the Petitioner which were the subject matter of the application under Tariff Item No 85.18/27(4) of the Indian Customs Tariff Act, 1975.

2. The petitioner was engaged in manufacture of electric lamps of different size, shape and specification. In course of business, the petitioner had to import ''Tungsten Filaments'' (hereinafter referred to as the imported goods) from abroad and that it was alleged that the Customs Authorities all along were imposing duty treating the same to be belonged to the group of Items mentioned in Chapter 21 and Heading No. 81.01.01/ 04(1) of the Indian Customs Tariff Act, 1975. Thereafter, the respondents all of a sudden decided to treat the said item under Chapter 80 and Heading No. 85.18/(27)(4) of the Indian Customs Tariff Act, 1975. On the basis of the said entry the respondents demanded duty at the rate of 100% plus 20% surcharge thereon contending inter alia, that the said item of import being a part of the lamp was conning under that entry. Item No. 81.01/04(1) is set out herein below :-

"Tungsten molybdenum tantalum and other base metals, wrought or unwrought and articles thereof.

(1) Not elsewhere specified...60%.

Item No. 85.18/27(4) is set, out hereinbelow :-

"Electric Filament lamps and electric discharge lamps (excluding infrared and ultra - violet lamps) are - lamps electrically ignited photographic flash bulbs...100%."

3. The question involved in the writ application was whether the said imported goods came within the purview of Item 85.18/27(4) of the Indian Customs Tariff Act, 1975 as mentioned above. It was contended on behalf of the appellant in this appeal that the said imported goods were brought after cutting into size, shape and form and as such the same should be treated to be identifiable part of an electric bulb and should be assessed under that item.

4. The case of the respondent, namely, the writ petitioner before the learned Trial Judge was that the imported goods cannot be said to be an electric lamp or even a component thereof so as to come within the latter tariff item inasmuch as the said goods were incapable of any independent use. As the said filaments, had to be coated and sprayed with a material known as Getter and thereafter had to undergo certain soldering process in order to become a component of an electric lamp in the sense that it can emit or generate electrical energy.

5. The learned Judge on consideration of the relevant item and the submissions made by the parties came to the conclusion that the said imported goods could not be called electric filament lamps or even an identifiable part or component thereof in order to come within the latter Tariff Item bearing a higher rate of duty. They were undoubtedly filament Parts. In order to satisfy the description of the electrical goods in the latter Tariff Item it is to be established that the same was an electric lamp or even an identifiable part or component thereof.

6. In our view the learned Judge was right in holding that the imported goods in question did not come within the purview of the latter item of the Customs Tariff Act and it was liable for duty under the old item, namely, under Heading No. 81.01.01/04(1) of the Indian Customs Tariff Act, 1975. In this case the question was whether the goods in question should come under one entry or the other of the Customs Tariff Act. This undoubtedly require some evidence to be taken at the time of assessment of duty but unless by the law an identifiable, uniform and determinate test is laid down by which the goods in question could be distinguished properly, it would create "confounding" controversy and would give rise to the scope for arbitrary assessment at the hand of different authorities. In the absence of any clear criterion to determine what is electric filament lamps or a part or component thereof the meaning ascribed to the term in commercial parlance should be adhered to. Accordingly, we do not find any merit in the appeal and the appeal is dismissed accordingly, and the judgment of the learned Trial Judge is upheld. All interim orders, if any, are vacated.

7. There will be no order as to costs.

8. Before we part with this matter, we must record our strong displeasure in this matter inasmuch as though this appeal was filed in September, 1978, it appears that the appellant Union of India did not take any step for expeditious disposal of the appeal which is pending since 1978 and the learned counsel appearing on behalf of the appellant could not give any satisfactory explanation in this regard. We may point out that by this process a large number of old appeals are pending and which are coming in the usual course which could be disposed of much earlier if the matter is mentioned before this Court.

9. Let a copy of this order be sent by the Registrar, Original Side of this Court to the Secretary, Ministry of Law as well as the Secretary, Ministry of Finance (Customs), New Delhi, for their information.

