(2023) 07 CESTAT CK 0026

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 41272 Of 2013

Commissioner Of Customs (Air) APPELLANT

Vs

M/S. RBR Knit Process Pvt. Ltd RESPONDENT

Date of Decision : 17-07-2023

Acts Referred:
Customs Tariff Act, 1975 — Section 3, 16
Customs Act, 1962 — Section 25(1)

Citation : (2023) 07 CESTAT CK 0026

Hon'ble Judges : Sulekha Beevi C.S., Member (J);Vasa Seshagiri Rao,Member (T)

Bench : Division Bench

Advocate : Anandalakshmi Ganeshram, Hari Radhakrishnan

Final Decision : Dismissed

Judgement

Sulekha Beevi C.S., Member (J)

1. Brief facts are that the appellant registered themselves under Project Import Scheme and deposited an amount of Rs.81,873/- being 2% of the project value for clearance of goods without duty under the scheme. The appellant cleared two consignments of Koch Membrane Systems provisionally. They produced an installation certificate dated 22.02.2006 and the remittance details from their bankers. Before finalization of the assessment, the Customs Receipt audit vide their memo dated 07.02.2008 observed that according to Regulation 3(a) (ii) of the import Regulations 1986 an industrial unit will not include single machinery of Composite machinery within the meaning assigned to it as per Notes 3 and 4 to Section XVI of the Customs Tariff Act, 1975 and that Reverse Osmosis Plant being a composite machinery is not eligible for concessional rate of duty under Project Imports. A demand notice was issued on 14.02.2008 demanding duty along with interest. After considering the submissions made by the appellant, the adjudicating authority concluded that in terms of Notification No. 14/2004-Cus dated 08.01.2004 the exemption was applicable only to composite water

treatment plants. The membrane system imported by the appellant is not eligible for exemption. Aggrieved by such order, the importer filed an appeal before the Commissioner (Appeals) who vide order impugned herein set aside the order passed by the original authority. Thus, the Department is now before the Tribunal.

2. On behalf of the appellant Smt. Anandalakshmi Ganeshram, Superintendent appeared and argued the matter. It is submitted by the Ld. AR that the imported goods are only Membranes and not Reverse Osmosis Membrane Filtration System. Only Parts / Components of the Water Supply Projects are eligible for the benefit of the Notification No.14/2004-Cus. The Certificate issued by ROC dated 30.10.2005 of the District Collector, Coimbatore and the Certificate of the Tamil Nadu Pollution Control Board clearly state that the imported goods are "Membranes". The Tribunal in the case of Pure & Cure Technology Vs. Commissioner of Customs, Mumbai [2019-TIOL-38-CESTAT-MUM] held that Reverse Osmosis Membrane by itself does not constitute water purification equipment. Therefore, the respondent importer is not eligible for the benefit of the Customs Notification No.14/2004-Cus. The Ld. AR prayed that the appeal may be allowed.

3. The Ld. counsel Shri Hari Radhakrishnan appeared and argued for the respondent. The relevant Notification No.14/2004-Cus reads as under:-

Water supply projects for agricultural and industrial use- Exemption

"In exercise of the powers conferred by sub-Section(1) 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts Water Supply Projects, falling under heading 9801 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), from whole of the duty of customs leviable thereon under the said First Schedule, and from whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act. Explanation.-Water Supply Project includes a plant for desalination, demineralization or purification of water or for carrying out any similar process or processes intended to make the water fit for agricultural or industrial use.

2. This notification shall come into force on the 9th day of January, 2004. [Notification No.14/2004-Cus., dated 08-01-2004]"

4. As per the above notification, water supply projects falling under CTH 9801 is exempted from the duty of Customs. The explanation in the notification says that water supply project includes a plant for desalination etc; or for carrying out any similar process or processes intended to make the water fit for agricultural or industrial use. It is submitted that the main ground raised by the department in the appeal is that the goods imported are merely Membranes and not Membrane System. The brochure in regard to the goods imported was adverted to by the Ld. counsel to submit that the imported goods are membrane systems. The very same issue came for consideration before the Tribunal in the case Commissioner of Custom, Mumbai Vs. Rochem Separation Systems India Ltd. [2010 (251) ELT

438 (Tri. Mum.)], it was held by the Tribunal that the Reverse Osmosis Membrane Filtration System would come within the meaning of "plant" used in the definition of water supply project. The Ld. counsel prayed that the appeal may be dismissed.

5. Heard both sides.

6. The issue that arises for consideration is whether the respondent is eligible to avail the exemption as per Notification No. 14/2004-Cus dated 08.01.2004 on the goods imported viz., Koch Membrane Systems. The Department has contended that the imported goods are merely Membranes and not Membrane System. The brochure of the imported goods has been furnished by the Ld. counsel for the respondent. The product description along with the performance reads as under:-

Performance:-

"Performance specifications shown on the front side of this document are nominal value, individual element permeate flows may vary+20/-75% from the values shown. Minimum chloride ion rejection is 97.5% at the conditions show.

System performance should be predicated using KMS ROPRO design software Element performance within ROPRO is based on the nominal values shows.

System operating data should be normalized and key performance parameters traded using KMS "NORMPRO" software".

7. From the technical literature of the product, it can be seen that the goods are membrane systems. The very same issue was considered by the Tribunal in the case of M/s. Rochem Separation Systems (supra). The Tribunal after considering the issue held that the Reverse Osmosis Membrane Filtration System will fall within the meaning of "plant" used in the definition of water supply project, in the notification 14/2004. The relevant part of the order reads as under :

"In this appeal of the Revenue, the short question for consideration is whether the respondent was eligible for the benefit of exemption Notification No.14/2004-Cus., dated 08-01-2004 in respect of what they considered as a "project import". The above notification granted exemption from payment of CVD on "water supply project" falling under Tariff Heading 9801 of First Schedule to the Customs Tariff Act, 1975 as well as exemption from payment of basic customs duty leviable thereon. An "explanation" to the notification defined "water supply project" thus : "Water Supply Project includes a plant for desalination, demineralization or purification of water or for carrying out any similar processes intended to make water fit for agricultural or industrial use." In the present case, the import by the respondent was made for setting up a "water supply project" for industrial use at M/s. DSM Sugar Ltd, Moradabad (U.P.). The importer furnished the requisite "essentiality certificate" from the sponsoring authority, namely District Magistrate of Moradabad, who certified that the machinery proposed to be imported were required for setting up of "water supply project" for industrial use. The department enquired about the exact nature of the project. They found that the effluent water generated by the plant it was treated in a Biomethanation System to produce biogas. The effluent from the said system was converted into bio-manure in a bio-composting plant. The "Biomethanated Spent Wash" from the Bio-Digester, after recovering the biogas, was fed to "Reverse Osmosis Membrane Filtration System". The output from this filtration system consisted of two streams of water – 50% pure water and 50% reject. The pure water, referred to as, "permeate water" was diverted for industrial use, while the impure water (reject) was recycled in the bio-composting plant. On a study of this process, it appeared to the department that the project was mainly an "effluent water treatment plant" and therefore, would not qualify for the benefit of the above notification. This view was upheld by the original authority, but rejected by the first appellate authority.

2. We have perused the order passed by the learned Commissioner (Appeals) and have found cogent reasons in support of the view taken therein. Apparently, the Reverse Osmosis Membrane Filtration System would squarely come within the meaning of "plant" used in the definition of Water Supply Project." The essentiality certificate issued by the District Magistrate, apart from satisfying the condition for exemption, would also support the plea raised by the respondent before the lower authorities. The project import apparently fell within the ambit of the above exemption notification by virtue of the "Explanation" thereto. The respondent was eligible for the benefit, as rightly held by the learned Commissioner (Appeals)".

8. Apart from this, in the present case, the respondent has furnished the installation certificate which mentions the goods as "effluent treatment unit with reverse osmosis to deliver water for re-use". From the documents, we are convinced that the goods imported are membrane systems and are eligible for the exemption under Notification No.14/2004-Cus. The decision relied by the Ld. AR appearing for the Department is not applicable to the facts of this case, as the said decision relates to Notification No. 6/2006-CE dated 01.03.2006 which is for water purification equipment specified in the said notification.

9. In the result, we do not find any merits in the appeal filed by the Department, the same is dismissed.