
(2015) 10 SC CK 0021

In the Supreme Court Of India

Case No : Civil Appeal No. 2441 of 2007

Commissioner of Customs (Imports)

APPELLANT

Vs

Reliance Industries Ltd.

RESPONDENT

Date of Decision : 06-10-2015

Acts Referred:

Citation : (2015) 325 ELT 223

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri Harish Salve and S.K. Bagaria, Senior Advocates, K.R. Sasiprabhu, Rohan Shah, Vipin Jain, Alok Yadav, Jaideep Patel, Vishnu Sharma, Shiven Khanna, Shilpa Balani, Ajith Singh, Somiran Sharma, Biju P. Raman and Aswin Dave, Advocates, for the Respondent; S/Shri Yashank Adhyaru, Senior Advocate, Rupesh Kumar, Arijit Prasad, Jitin Singhal and B. Krishna Prasad, Advocates, for the Appellant

Final Decision : Dismissed

Judgement

1. The respondent herein had imported through courier seven cartons of Front End Engineering Package (FEED) and declared the value of USD 3 million for the aforesaid FEED. These manuals were required for Purified Teraphthalic Acid (PTA) plant. In the aforesaid FEED, technical information was contained which was required to engineer, construct, operate and maintain the PTA plant for the production of PTA and sale thereof. In other words, technical information was provided in the form of FEED for the purposes of procuring, engineering, constructing, operation and maintenance of PTA Plant and sale of PTA anywhere in the world. In the bill of declaration which was filed by the respondent-assessee, the aforesaid goods were classified under Chapter Heading 49.01 and exemption from payment of import duty was claimed as per Notification No. 38/94-Cus., dated 1-3-1994.

2. Show cause notice was issued thereafter claiming the extended period of limitation to the effect that there was misdeclaration about the said product and

the aforesaid product was covered by Heading 4911.99 in respect of which full exemption from payment of excise duty was not available.

3. The demand in the show cause notice was confirmed after giving an opportunity of hearing to the respondent herein. The matter was taken by the respondent in appeal before the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "Tribunal"). The Tribunal has, vide the impugned order dated 6-9-2006 [2007 (207) E.L.T. 412 (Tri.-Mum.)], decided the issue in favour of the respondent herein both on merits as well as on limitation thereby holding that the show cause notice was beyond the period of limitation and since there was no misdeclaration, extended period of limitation was not available to the Department. It is this order which is challenged by the Revenue in the present appeal.

4. After hearing the counsel for the parties, we are of the opinion that this appeal is liable to be dismissed only on the ground of limitation as decided by the CESTAT as we are of the considered opinion that it was a case where the extended period of limitation provided under Section 28 of the Customs Act, 1962, could not have been availed by the Department.

5. In this behalf, it would be pertinent to mention that the issue of classification, at the relevant time when the goods in question were imported in June, 1994, had been decided by the Tribunal in two judgments, i.e., "Roto Inks Private Limited v. Collector of Customs" [1990 (47) E.L.T. 398] and "Tata Consultancy Services v. Collector of Customs" [1991 (53) E.L.T. 454] classifying these very articles under tariff item 49.01. Thus, when the declaration was filed by the respondent, in view of the aforesaid position in law that was prevailing at that time, it was a bona fide declaration and cannot be treated as misdeclaration. No doubt, that in other case, the matter travelled up to this Court and this Court in the case of Commissioner of Customs (General), New Delhi v. Gujarat Perstorp Electronics Ltd. [2005 (7) SCC 118 = 2005 (186) E.L.T. 532 (S.C.)], after straightening the law, remitted the matter back to the Tribunal for fresh consideration. This very judgment was in the knowledge of the Tribunal while deciding the case at hand and is specifically taken note of. The discussion on that basis proceeds as follows : -

"At the time of import, i.e., in June 1994, the law on the subject of import of technical documents had evolved and formulated. The judgments of the Tribunal in Roto Inks Private Limited v. Collector of Customs [1990 (47) E.L.T. 398] and Tata Consultancy Services v. Collector of Customs [1991 (53) E.L.T. 454] clearly held then that the imported articles were classifiable under the prevailing Tariff Item 49.01. On a reference to the Larger Bench, in August 2000, in the case of Parsrampuriah Synthetics Ltd. v. Commissioner of Customs, New Delhi reported in 2000 (38) RLT 846 also upheld the ratio in these decisions by holding that the expression "printed books "covered" printed material containing technical knowledge, drawings, designs, plans etc." As such the view taken earlier in Roto Inks case got reaffirmed by the Larger Bench. This judgment of the Larger Bench

of the Tribunal ran a further course through the Supreme Court which upset that decision of the CEGAT on 30-8-2001 [2001 (133) E.L.T. 9 (S.C.)]. The correctness of this judgment of the Supreme Court, upsetting the CEGAT decision, was doubted, by a three Judges Bench of the Supreme Court in the case of Gujarat Perstorp Electronics case - 2005 (186) E.L.T. 532 (S.C.) - wherein the court noted in para 53 that "Some of the tests applied in Parasrampuriah Synthetics Ltd. were not relevant and appropriate". It is thus clear from the above that the issue as to whether Manuals of the type imported by RIL could be understood & classified as Printed Books or not was a highly debatable one where more than one plausible views and opinions could co-exist Plea of bona fide belief. In entertaining the view that the Manuals, imported by RIL, in the year 1994, being Books under 4901 & were exempted from payment of duty can be accepted and found. They cannot be held or accused of having wilfully misstated or suppressed facts. The history of classification of the subject goods, would tilt the sale to a bona fide belief on part of RIL. We rely on [Jaiprakash Ltd. v. Commissioner of C. Ex., Chandigarh - 2002 (146) E.L.T. 481 (S.C.), Larsen & Toubro Ltd. v. C.C.E., Raipur - 2000 (115) E.L.T. 172, Jaiswal Chemicals Pvt. Ltd. v. Collector of Central Excise, Indore - 1997 (94) E.L.T. 558 (Tribunal) and Afcons Panling Joint Venture v. Commissioner of Customs & Excise, Jalandhar - 2004 (166) E.L.T. 207 (Tribunal)]

6. We are in agreement with the aforesaid view taken by the Tribunal which categorically holds that the respondent could not be held or accused of having wilfully misstated or suppressed facts. Therefore, once we agree with the Tribunal that the show cause notice itself was time-barred, it is not necessary to go into the question on merits. The appeal stands dismissed only on this ground.