(2006) 03 CAL CK 0062

In the Calcutta High Court

Case No : CUSTA No. 1 of 1998

Commissioner of Customs (Preventive) APPELLANT

Vs

Anoop Kumar RESPONDENT

Date of Decision : 07-03-2006

Acts Referred:

Citation : (2006) 204 ELT 522

Hon'ble Judges : Pravendu Narayan Sinha, J;Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Biswanath Samaddar, for the Appellant;

Judgement

Bhaskar Bhattacharya, J.—In this reference the following questions of law arise for determination :

(i) Whether the Import Trade Control Licence produced by the importer is eligible for import of the goods in question which are not listed in the Appendix XXXV of the Handbook of Procedure 1st April, 1992 to 31st March, 1997 (Vol-1) and therefore not covered by the said licence?

(ii) Whether there is any scope for applying the common parlance test to arrive at the right identity of the goods when the item indisputably falling under Tariff Heading No. 9503.90 is consumer goods and hence not covered by the licence produced by the importers?

(iii) Whether there was any scope on the part of the importers to form bona fide belief that the goods in question were importable against the special import licence when the list of goods in Appendix -XXXV of the Handbook of Procedure 92-97 did not include at all?

(iv) Whether a judicial pronouncement based on assumption or presumption is maintainable in law (quoted in Para 5 of the CEGAT order)?

2. The facts giving rise to filing of the present application may be summarised thus:

(a) The respondent herein imported 10,000 pieces of battery operated toys and filed a bill of entry being No. 1161, dated 16th January, 1996. The total value of the goods declared by the respondent was Rs. 6,91,294.50p. The respondent along with seven other persons were served with a show cause notice dated 8th April, 1996 alleging misdeclaration in respect of the quantity of the goods and the value of the items and also alleging violation of import restrictions.

(b) Ultimately, the proceedings as regards the charge of quantity and valuation against the respondent were dropped and the proceedings against the other six persons were discontinued in its entirety. However, so far the respondent is concerned, the Commissioner of Customs confiscated the goods in question with an option to the respondent to redeem those on payment of Rs. 3,00,000/- and also imposed a personal penalty of Rs. 50,000/- on the ground that the walkie-talkies imported by the respondent were not in the form of reduced size or models, classifiable under the Tariff Heading 9503.90 (sic) but they were electronic toys falling under Tariff Heading 9503.90.

(c) On the basis of the above classification, it was held that as the goods were consumer goods and were restricted items, those were not permitted to be imported against the special import licence produced by the respondent but those items required a licence for import of such consumer goods.

(d) The goods were confiscated on the ground that the respondent had not been able to produce a licence covering the goods in question and the special import licence produced by them did not cover the goods, the goods being consumer items.

(e) Being dissatisfied, the respondent preferred an appeal before the Tribunal and the Tribunal allowed the appeal thereby setting aside the order of confiscation and penalty with a specific finding that no violation of law was committed by the respondent.

(f) While arriving at such conclusion, the Tribunal came to the conclusion that the respondent imported items under a special import licence issued by the licensing authority and in the said licence against the column description it was mentioned as follows :

These licence is eligible for import of item listed in the Appendix XXXV of Handbook of Procedure 1st April, 1992 to 31st March, 1997 (Volume 1).

(g) The Tribunal held that even considering the classification by the Commissioner as falling under Tariff Heading 9503.90 and the item being a restricted item, the footnote under Paragraph 156 referred to certain specified goods being importable under special import licence. For looking into the specified goods, as also in terms of the licence, Appendix XXXV has to be looked into and the Appendix XXXV, as it stood at the relevant time, refers to Columns 3 to 5 of the book titled "ITC Classification of Export and Import Items published and notified by the Director General of Foreign Trade. According to the Tribunal, Columns 3 to 5 under Chapter 95 allows electronic games/toys to be imported against Special Import Licence. In Column No. 1 against such description of electronic games/toys, exim code has been given as 9503.2000.10. According to the Tribunal, under the said item description, no specific Tariff Heading of the Customs Tariff had been mentioned, as was the case prior to amendment of Appendix XXXV in which Serial No. 15 of the specified items gave a Heading 9503.20 against the electronic games and toys. The Tribunal, thus, concluded that from the comparative reading of the amended and unamended Appendix, it is apparent that prior to 1996 only, those electronic games/toys, which was classifiable under 9503.20, could be imported against the Special Import Licence.

(h) The Tribunal, thus, came to the conclusion that Special Import Licence was obtained by the appellant for import of the items in question and the department had not been able to put on record any evidence to show that there was any male fide on the part of the importers. Even if it was presumed that the goods were not importable under the Special Import Licence produced by the respondents, the Tribunal continued, going to the common parlance test, the electronic toys and games would stand covered by the licence in question as there could be a bona fide belief to entertain a reasonable doubt that the goods "walkie-talkie toys" in question were importable against Special Import Licence.

3. Being dissatisfied, the Commissioner of Customs has come up with the present reference application.

4. After hearing the learned Counsel for the parties and after going through the decisions of the Apex Court in the case of Akbar Badrudin Jiwani of Bombay Vs. Collector of Customs, Bombay, we find that the general principle of interpretation of Tariff Entries occurring in a taxing state is of a commercial nomenclature and understanding between persons in the trade but it is also a settled legal position that the said doctrine of commercial nomenclature or trade understanding should be departed from in a case where the statutory content in which the Tariff Entry appears, requires such a departure. In other words, in cases where the application of commercial meaning or trade nomenclature runs counter to the statutory contest in which the said word was used, the said principle of interpretation should not be applied. According to Supreme Court, trade meaning or commercial nomenclature would be applicable if a particular product description occurs by itself in a Tariff Entry and there is no conflict between the Tariff Entry and any other Entry requiring to reconcile and harmonise that Tariff Entry with any other Entry.

5. In the said decision the Supreme Court further held that the words used in the taxing stature are to be understood in common parlance or commercial parlance but such an understanding or commercial nomenclature can be given only in cases where the word in the Tariff Entry has not been sued in a scientific or technical sense and where there is no conflict between the word used in the Tariff Entry and in any other Entry of the Tariff schedule which is the case before us.

6. Applying the aforesaid principle of the fact of the present case we find that Import Trade Control Licence produced by the respondent was rightly held to be legal for import of the goods in question prior to the amendment of 1996.

7. Similarly, we find that as laid down by the Apex Court in the case of Akbar Badruddin Jiwani (supra), there is ample scope of applying common parlance test to arrive at the right identify of the goods when the item is not falling under the Tariff Heading 9503.90 as commercial goods.

8. We, further find that in the fact of the present case there was sufficient ground of bona fide belief on the part of importer that the goods in question was importable against Special Import Licence. As regards the last point formulated by the Division Bench, we are of the view that the Tribunal rightly came to the conclusion that the Revenue failed to prove any violation on the part of the respondent and as such, the decision is not at all based on assumption or presumption.

9. We, accordingly, find that the referred questions should be answered against the Revenue. The reference is, thus, disposed of. In the facts and circumstances, there will be, however, no order as to costs.

Pravendu Narayan Sinha, J.

10. I agree.