(2021) 08 CESTAT CK 0049

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 20388 Of 2021

Kelhome Impex Vs Commissioner Of Customs?

Date of Decision : 16-08-2021

Acts Referred:
Customs Act, 1962 — Section 111(d), 112(a), 125
Foreign Trade (Development & Regulation) Act, 1992 — Section 3(3)
Bureau of Indian Standards Act, 2016 — Section 14

Citation : (2021) 08 CESTAT CK 0049

Hon'ble Judges : S.S. Garg, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The present appeal is directed against the impugned order dt. 23/03/2021 passed by the Commissioner of Customs, Cochin whereby the learned Commissioner has ordered for confiscation of the goods imported vide Bill of Entry No.2113571 dt. 26/12/2020 under Section 111(d) of the Customs Act, 1962 read with Section 3(3) of Foreign Trade (Development & Regulation) Act, 1992. Further the Commissioner has extended an option to the importer to redeem the goods on payment of a fine of Rs.3 lakhs under Section 125 of Customs Act, 1962, solely for the purpose of re-export. Further the Commissioner has also imposed a penalty of Rs.2 lakhs under Section 112(a) of the Customs Act, 1962.

2. Briefly the facts of the present case are that the appellant filed Bill of Entry No.2113571 dt. 26/12/2020 through their Customs Broker M/s. RCS Logistics Pvt. Ltd. for clearance of goods declared as "Hand Mixer: Model No. KHEB150", "Hand Mixer: Model No. KH EB 200", "Hand Mixer: Model No. KH EB250", (all there classified under the CTH 8509 8000), Spare Parts for Hand Mixer: Knob Set, Spare Parts for Hand Mixer: Body Cover (both classified under the CTH 8509 9000 and Spare Parts for Hand Mixer: Color Carton Box (classified under CTH 4819 2090) (covered under the Commercial Invoice No. HL2020120301 dt. 03/12/2020) with declared assessable value of Rs.68,08,231/-. The said Bill of Entry was assessed for duty and the appellant was directed to pay an amount of

Rs.29,91,817/- as import duty on the subject goods and the appellant paid the said amount being the duty by way of E-Challan dt. 30/12/2020. After the payment of duty, the officers of the Department raised objection that the subject goods i.e. Hand Mixers are subjected to mandatory Bureau of India Standards (BIS) compliance and since the goods covered by Ext-P2 Bill of Entry were not certified by BIS authorities, the same cannot be cleared for home consumption and also is liable for confiscation. Thereafter the appellant who was not aware of such restriction, requested the Department vide their letter dt. 29/01/2021 for taking a lenient view in the matter and requested to allow clearance of the imported goods; but the Department did not accept the request of the appellant and even for re-export of the goods. Thereafter after following the due process, the original authority vide the Order-in-Original confiscated the goods under Section 111(d) of the Customs Act, 1962; however allowed the appellant to redeem the goods on payment of fine of Rs.3 lakhs solely for the purpose of reexport and also imposed a penalty of Rs.2 lakhs under Section 112(a) of the Customs Act. The appellant complied with the impugned order to the extent of depositing Rs. 3 lakhs as fine and Rs.2 lakhs as penalty and thereafter the appellant filed the present appeal.

3. Heard both sides and perused the records.

4.1. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that the learned Commissioner's finding in para 8 holding that the impugned goods is governed by Bureau of India Standards Kitchen Appliances (Quality Control) Order, 2018 dt. 10/10/2018 issued by the Ministry of Commerce and Industry, wherein handheld blenders have to conform to IS 302: Part 2: Sec 14, is absolutely wrong and without any basis. Further the Commissioner has held that the subject goods have not been found to comply with the BIS provisions. Learned counsel submitted that this finding in para 8 is wrong and without any basis. He further submitted that there is no dispute on the identity / declared description of the goods and the respondent has no case that the appellant had wrongly declared the description for the purpose of overcoming the BIS compliance. He further submitted that there is no finding in the impugned order that what is under import is Handheld Blender and not Handheld Mixer. He also submitted that without such an express finding, the conclusion drawn by the Commissioner that the goods are covered under the BIS Quality Control Order, 2018 is arbitrary and illegal. Learned counsel further submitted that Handheld Mixers and Handheld Blenders are entirely different products having different specifications, mechanisms, performance, speed, power and are even meant for performing different tasks. He further submitted that Handheld Mixers and Handheld Blenders are separately defined under IS 302 Part 2 Section 14 of the Indian Standards and the language of the said standards itself would draw a clear distinction between Handheld Blender and Handheld Mixer. Thereafter the learned counsel in a tabular form has given the differences between the Handheld Blender and Handheld Mixers as per the IS 302 Part 2 Section 14 of the Indian Standards, which are as follows:-

Sl. No.

IS 302 Para No.& Heading

Hand Held Blender

Hand Held Mixer

1.

Para 1- Scope

Blender is at Sl.No. 3

Cream wipers, egg beaters and food mixers are at Sl.No. 9,10 & 11

2.

Para 3- Terminology

3.1.9.102- Blenders are operated with the bowl filled to its maximum indicated level with a mixture comprising two parts by mass of soaked carrots and three parts water. If this level is not indicated, the bowl is filled to two-thirds of its total capacity. The carrots are soaked in water for 24 h and cut so that the dimensions of the pieces do not exceed 15 mm. If the bowl is not provided, a cylindrical bowl is used which has a capacity of approximately 1 litre and an inner diameter of approximately 110 mm. Blenders for liquid are operated with water instead of the mixture

3.1.9.110 - Food mixers with beaters for mixing cake batter are operated with the beater blades as close as possible to the bottom of a bowl containing dry sand having a grain size between 170 mm2 and 250 mm2. The height of the sand in the bowl is approximately 80 percent of the length of the effective part of the beater. Food mixers with kneaders for mixing yeast dough are operated with the kneaders in a bowl filled with a mixture of flour and water.

3.

Para 7 - Marking & Instruction

7.12 Addition - The instructions for handheld blenders shall include the substance of the following:

a) Always disconnect the blender from the supply if it is left unattended and before assembling, disassembling or cleaning; and

b) Do not allow children to use the blender without supervision. Accessories, other than those supplied with the appliance, shall include instructions for their safe use

No such instructions for Hand Held Mixers in Para 7

4.

Para 11- Heating

11.7.103 - Blenders that have to be kept switched on by hand and handheld blenders are operated for 1 min with the control adjusted to the highest setting. The operation is carried out five times with rest periods of 1 min during which the mixture is replaced. For other blenders, the period of operation is 3 min, the operation being carried out 10 times

11.7.110- Food mixers with beaters for mixing cake batter are operated for 15 min unless they incorporate a biasedoff switch, in which case they are operated for 5 min. Food mixers with kneaders for mixing yeast dough are operated for:

a) 5 min for hand-held food mixers, and

b) 10 min for other food mixers.

For the first 30 s the control is adjusted to the lowest setting, after which the control is adjusted to the position for mixing yeast dough stated in the instructions

5.

Para 20- Stability & Mechanical Hazards

Hand Held Blender is mentioned at Sl. No. (e) in Para 20.02

Food mixer if mentioned at Sl. No. (d) in Para 20.02

6.

Para 20- Stability & Mechanical Hazards

20.102- Blades of handheld blenders shall be completely screened from above and shall not be able to touch a flat surface while rotating. Compliance is checked by inspection and by applying a cylindrical rod from any position between the vertical and an angle of 45° to the upper side of the blending blade. The rod has a diameter of 8.0 mm ± 0.1 mm and unlimited length.

It shall not be possible to touch the blades with the end of the test rod

20.101- Accessories for cream whippers, egg beaters and handheld food mixers shall not have knife edges, unless a suitable guard prevents accidental contact with their rotating parts.

It shall not be possible to release beaters, kneaders and similar accessories of handheld food mixers by pressing a button or a similar action while the accessory is rotating at a speed exceeding 1 500 rev/min.

Compliance is checked by inspection, by measurement and by manual test.

7.

20.103 -Hand-held blenders shall incorporate a biased off switch, its actuating member being positioned in a recess or otherwise guarded to prevent accidental operation.

20.103 - NOTE-This requirement does not apply to hand-held food mixers provided with a blender attachment.

8.

Para 25.14- Addition

Hand-Held Blenders and Hand-Held Mixers are also subjected to the following test while mounted on an apparatus similar to that of Fig. 8.

The conjunction "and" used in between the two products would clearly demonstrate the clear and unambiguous intention of the BIS Authorities in identifying the products as too different independent products

4.2. The learned counsel has also, in a tabular form, given different tasks that can be performed by Handheld blender and Handheld Mixer, which are given below:-

TASK

HAND BLENDER

HAND MIXER

EGG BEATING

NO

YES

CREAM WHIPPING

NO

YES

DOUGH KNEADING

NO

YES

MIXING & KNEADING

NO

YES

BLEANDING/MAKING SAUCES/CONDIMENTS

YES

NO

PREPARING BABY FOODS/SMOOTHIES

YES

NO

CHOPPING

YES

NO

BLENDING AND PURÉEING FOODS

YES

NO

He further submitted that the products under import are not covered under the BIS mandatory condition of the rules because BIS Kitchen Appliances (Quality Control) Order, 2018 provides for mandatory compliance of BIS conditions only for Handheld Blender covered under IS 302; Part 2: Section 14.

4.3. During the course of argument, the learned counsel also shown the photograph of the impugned goods which was disputed by the learned AR and sought time to produce the pictures of the impugned goods imported by the appellant. Thereafter vide letter dt. 04/08/2021, Revenue filed Additional Submissions along with photographs of the impugned goods and also submitted in their Additional Written Submissions that the subject goods under dispute was referred to the authorised officer of the BIS posted in Cochin and the officer after verifying the product literature confirmed that the imported apparatus is liable for mandatory BIS compliance as Handheld Blender and has further observed that Handheld Blenders are not defined in the IS302 Part 2 Section 14 and only a functional description of the product is brought out. In reply to the Additional Submissions, the learned counsel for the appellant submitted that the submissions of the respondent that the goods were referred to authorised officer of BIS is totally a new ground taken by the Department and no such reference to the authorised officer of BIS or his opinion has neither been supplied to the appellant nor made a part of the impugned Order-in-Original. He also submitted that there is not even a mention about such reference to BIS authorities and their reply in the impugned Order-in-Original. Further the said reference or the reply from BIS officer is not even produced before this Hon'ble Tribunal and hence the same cannot be considered for deciding the present case. He also submitted that the contention of the Department that Handheld Blenders are not defined in IS: 302-2 -14 is absolutely baseless. He further submitted that specifications for Handheld Blenders are categorically mentioned in para 7.12, para 11.7.103, para 20.02, para 20.102, para 20.103 and para 25.14 of the IS: 302-2-14. He also submitted that IS: 302-2-14 had also clearly differentiated

Handheld Blenders from Handheld Mixers in para 11.7.103/110, para 20.101/102, para 20.103 and in para 25.14 of the IS:302-2-14 and hence the contention of the respondent in this regard is also unsustainable.

5. On the other hand, the learned AR reiterated the findings of the impugned order and submitted that the impugned import goods are subject to mandatory compliance of BIS Kitchen Appliances (Quality Control) Order, 2018 and the Department found that the impugned goods are not found to have complied with the said Standard and therefore Department confiscated the goods with an option to reexport the imported goods on payment of redemption fine.

6. After considering the submissions of both sides and perusal of the record, I find that the appellant filed the Bill of Entry and declared the goods as Hand Mixer which was assessed to duty of Rs.29,91,817/-and the appellant paid the duty. But thereafter the Department raised the objection that the said goods are subject to mandatory BIS compliance and the Bill of Entry was not certified by the BIS authorities and therefore , the same cannot be cleared for home consumption and subsequently the goods were ordered to be confiscated and allowed to be reexported on payment of fine. Further I find that there is no dispute on the identity or declared description of the goods and the respondent has not held that the appellant had wrongly declared the description for the purpose of overcoming the BIS standard and there is no finding in the impugned order that what is under import is Handheld blender and not Handheld Mixer as declared by the appellant. Further I find that without such an express findings, the conclusion drawn by the responded that the goods are covered by BIS Kitchen Appliances (Quality Control) Order is not sustainable. Further I find that the Department as well as the appellant have submitted the photographs of the impugned imported goods which is reproduced hereinbelow.

7. Further, from the perusal of the various standards as mentioned in the BIS Kitchen Appliances (Quality Control) Order, 2018 dt. 10/10/2018, I find that Handheld Mixer and the Handheld Blender are entirely different products having different specifications, mechanisms, performance, speed, power and even meant for performing different tasks. The differences between the two products have been cited above and perusal of those differences clearly shows that the language of the said standard itself would draw a clear distinction between Handheld Blender and Handheld Mixer. Further the contention of the Department that the said product was examined by the authorised officer of the BIS posted at Cochin and he has confirmed that the imported apparatus is liable for mandatory BIS compliance as Handheld Blender is without any basis and has been raised only for the first time at the time of argument. No such reference to the authorised officer of BIS or his opinion has neither been provided to the appellant nor made part of the impugned Order-in-Original and not even produced before this Tribunal. Therefore, this stand of the Department has no basis and is liable to be rejected. Further the Department's stand that Handheld Blenders are not defined in IS:302-2-2014 is also not correct because various

parts of the BIS standards give specifications for Handheld Blenders and Handheld Mixers as has been noted above. Further I find that the appellant has given clear distinctions of tasks that can be performed by Hand blender and Hand Mixer and the said table has been reproduced above. In view of these facts, I am of the considered opinion that the Handheld Blenders and Handheld Mixers are two different products and having different specifications, mechanisms, performance, speed, power and even built for performing different tasks. Further, I am of the opinion that the impugned goods are not liable to have a BIS compliance as mentioned in BIS Kitchen Appliances (Quality Control) Order, 2018 as the same is not applicable in the impugned goods and therefore I set aside the impugned order and allow the appeal of the appellant and direct the Customs authorities to release the goods on payment of appropriate customs duty which the appellant has already paid as per his submissions. Hence, the appeal is allowed with consequential relief, if any. Stay application also gets disposed of.

(Order was pronounced in Open Court on 16/08/2021)