
(2023) 08 CESTAT CK 0043

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 2913 Of 2011

M/S. American Power Conversion India Pvt. Ltd

APPELLANT

Vs

Commissioner Of Customs

RESPONDENT

Date of Decision : 23-08-2023

Acts Referred:

Customs Act, 1962 — Section 25(1), 57, 58, 112(a), 125

Citation : (2023) 08 CESTAT CK 0043

Hon'ble Judges : Dr. D. M. Misra, Member (J); R. Bhagya Devi, Member (T)

Bench : Division Bench

Advocate : Neetu James, Shraddha Pandey, H. Jayathirtha

Final Decision : Disposed Of

Judgement

R. Bhagya Devi, Member (T)

1. The appellant M/s. American Power Conversion India Private Ltd. (the importer) are engaged in the manufacture of uninterrupted power supply and inverters within the electronics hardware technology Park. The appellant imported used Enviro-tuff Liner (ETL) packing material classifying the product under 39232990. They claimed the benefit of Notification No. 52/2003 dated 01.03.2003. The Commissioner (A) in the impugned order held that the Enviro-tuff Liner (ETL) was neither used in the process of manufacture of the articles of exported goods nor it was used in connection with production or packing of exported goods. He observed that merely because the item is used for facilitating safe transportation of the export goods, it did not entitle the goods for the exemption as packing material as stipulated in the exemption Notification. The Commissioner (A) accordingly confirmed the demand of duty, redemption fine and penalty.

2. The Learned counsels Ms. Neetu James Ms. Shraddha Pandey, on behalf of the appellant submitted that the items to be exported are sophisticated electronic items containing circuitry which are highly susceptible to meet damage due to

moisture and rainwater heat etc, hence, they had to ensure that the goods were transported with extra packing so that the goods are not damaged in transit. It is also submitted that Enviro-tuff Liner (ETL) is a fully woven liner which is hung into a general purposes ISO shipping container and allows for forklift loading and hand loading and slip sheet. Once loaded, it is completely sealed providing a closed off temperature and humidity-controlled environment for the goods inside, therefore, it is claimed that this being a packaging material the benefit of Notification should be extended.

3. On the other hand, the Authorised Representative on behalf of the Revenue submitted that the imported goods have nothing to do with the goods being exported and they are second-hand goods which necessarily have to be imported with necessary license as they are restricted items. He also relied on the judgement in the case of International Creative Foods Ltd. Versus Commissioner of Customs (APPL.), Cochin: 1999 (105) E.L.T. 92 (Tribunal) where under similar set of facts, the Tribunal held that the benefit of the Notification No.13/81-C.E. cannot be extended.

4. Heard both sides and perused the records. It is an admitted fact that the goods imported were used Enviro-tuff Liner (ETL) and on examination, it was found that it is a packing material to be used inside the 40 FT container to cover the goods inside the container. The question is whether these imported goods were eligible for benefit of Notification No.52/2003 dated 31.03.2003. The relevant notification is reproduced below:

Notification No. 52/2003 – Customs

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) (hereinafter referred to as the said Customs Act), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts,-

(a) all goods as specified in the Annexure -I to this notification, when imported or procured from a Public Warehouse or a Private Warehouse appointed or licensed, as the case may be, under section 57 or section 58 of the said Customs Act or from international exhibition held in India for the purposes of – (i) manufacture of articles for export or for being used in connection with the production or packaging or job work for export of goods or services by export oriented undertaking (hereinafter referred to as the unit) other than those referred to in clauses (b), (c) and (e), or

ANNEXURE-I

1. Capital goods and spares and accessories thereof.

9. Consumables 10.Packaging materials

5. From the above Notification, it is amply clear that the items specified therein are meant for manufacture of articles for export or for being used in connection

with the production or packing of these goods for export by the EOUs. Admittedly, in this case, the imported goods are used as liners inside the container to ensure that the goods are safely transported. In similar circumstances, in the case of International Creative Foods Ltd. versus

Commissioner of Customs, Cochin cited supra, the appellant had imported refrigeration units to be mounted on trucks used for transport of raw materials. The Commissioner had held that the refrigeration trucks were mainly used for transportation and not for production or packing; therefore, the benefit of Notification No. 13/81-C.E. which was meant for material handling equipment was denied. The Tribunal observing that the refrigerated trucks were used for the transport of goods which was essential for transporting the raw materials but that itself cannot be the reason to hold that the trucks have been used for production of the goods as envisaged in the Notification and accordingly, the benefit of the Notification was denied. In the case on hand, it is an admitted fact that the item imported is used inside the container only for safe transportation and not for the production of exported goods. Moreover, the Notification does not allow any used items to be imported and therefore, the question of extending the benefit does not arise at all.

6. The items imported were also found to be used ETL Liners which are categorised as second-hand goods fall under the category of restricted items. As per Para 2.17 of the Foreign Trade Policy, all second-hand goods are restricted for import and by importing used ETL liners, the importer had violated the provisions of Foreign Trade Policy thereby rendering the goods liable for confiscation. In view of the above, the Commissioner (A) had rightly confiscated the goods and imposed redemption fine and penalty. We, therefore, find no reasons to interfere with the order of the Commissioner (Appeals) and accordingly, we uphold the demand of duty of Rs.7,02,981/- along with interest.

7. In view of the various decisions of the High Courts observing that 10% redemption fine and 5% penalty are reasonable, we reduce the redemption fine from Rs.1,00,000/- to Rs.75,000/-(Rupees Seventy-five Thousand Only) under Section 125 of the Customs Act, 1962 and penalty from Rs.50,000/- to Rs.35,000/-(Rupees Thirty-five Thousand Only) under Section 112(a) of the Customs Act, 1962.

8. In the result, the duty demand along with interest is confirmed and redemption fine is reduced to Rs.75,000/- and penalty is reduced to Rs.35,000/-. The appeal is disposed of on above terms.