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(2003) 01 SC CK 0018

In the Supreme Court Of India

Case No : 4023 Of 1995

Star Iron Works Pvt. Ltd. APPELLANT

Vs

Collector of Customs, Calcutta RESPONDENT

Date of Decision : 22-01-2003

Acts Referred:

Citation : (2003) 85 ECC 718 : (2003) 153 ELT 257

Hon'ble Judges : M. B. Shah, J;Ashok Bhan, J;Arun Kumar, J

Bench : Full Bench

Advocate : A.R. Madhav Rao, Alok Yadav, Vishwanath Shukla and V. Balachandran, for the Appellant; M. Gourishankarmurthy and B. Krishna Prasad, for the Respondent

Final Decision : Allowed

Judgement

Shah, J.—Heard the learned counsels for the parties at length.

2. In pursuance of licence issued to the appellant in the year 1985, the appellant imported cardboard sheets. It was contended by the Assistant Collector of Customs that samples of the imported goods had been taken and referred to the Chief Chemist, Central Revenue Board, New Delhi and the Institute of Paper Technology, Saharanpur for verifying whether 'carboard' sheets were 'ivory boards'. After receipt of the report and after adjudicating the matter by final order dated 4th November, 1986, the Collector passed the order confiscating the goods and gave the above to the appellant to redeem the same on payment of redemption of fine of Rs. 47,000 by holding that imported goods were ivory boards and not cardboards. Against that judgment and order, the appellant preferred an appeal before the Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT) which was also dismissed by order dated 8th February, 1992. That order is challenged in this appeal.

3. Admittedly, in this case for arriving at the conclusion that imported goods were ivory boards, authorities have relied upon the certificate dated 11th August,

1986 issued by the Chief Chemist, Central Revenue. The relevant part of the said certificate is reproduced for its appreciation:

"Each of the four samples is a white rigid paper board with smooth, bright but non-gloss surfaces. Each is made of layers of paper pasted together. Each is composed of chemical pulp. Each is appreciably translucent and possesses a uniform look through showing a very even distribution of the pufp. Since the samples possess ail the qualities mentioned for Ivory Board in books available here, each can be considered as having the characteristics of Ivory Board. Lab No. Weight per sq. metre CLO-22(A) 385.6 gms. CLO-23(B) 295.7 gms. CLO-24(C) 292.3 gms. CLO-27(F) 298.3 gms. "CLO-25 & 26 (D&E) Each of the two samples is in the form of white rigid board with very smooth and glossy surfaces. Each is made of layers of paper. Each is composed of chemical pulp. Each is coated on both the surfaces with siliceous matter. Each has characteristics of Art Board. Each is other than Ivory Board, since Ivory Board is not known to be coated and glazed".

4. Undisputedly, the appellant's sample was item 'C'. For samples 'D' & 'E' the Chief Chemist has specifically stated that Ivory Board is not known to be coated and glazed.

5. As against this, Head of the Paper Department of the Institute of the Paper Technology, University of Roorkee, Saharanpur has stated that samples 'B' & 'E' are coated on both sides while samples A, B, C, F are uncoated. The relevant part of the

Report is as under:

"Board, coated on one or both sides, which produces a smooth surface capable of taking a very high finish and is used primarily for printing from fine screen half tone blocks, is termed as Art Board. Samples D and E are coaled on both sides while A, B, C & F are uncoated. As per the definitions given above, samples D & E can be termed as Art Board and samples marked as A, B, C & F can be termed as Ivory board."

6. From the aforesaid Report, one thing is clear that imported boards were uncoated. Still, however, both the authorities have arrived at the conclusion that they can be termed as Ivory board. Relying upon these opinions, the tribunal as well as the Collector arrived at the conclusion that appellant has imported Ivory board.

7. As against this, the learned counsel for the appellant pointed out that there is total misconception with regard to the imported goods. For this purpose, he referred to the definition of Ivory board given by S.I. (Indian Standards Glossary of terms) wherein Ivory board is given the following meaning:

"Ivory Board - A coated board generally used for visiting cards, menu cards and similar products. The coating is applied to both sides. It is generally above I50g/m2 consisting of one or more plies (see 'Ply'); may or may not have combined by

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pasting (see 'Pasting'); made wholly from bleached chemical pulp and suitable for printing and writing. It is characterised by its smoothness, stiffness, clean appearance and even look through."

8. Similarly, the Dictionary of Paper published by American Paper and Pulp Association also provides for the meaning of Ivory Board thus:

"Ivory Board (1) A coated bristol largely used for hotel and restaurant menus and similar work where halftone printing is required. The coating is applied to both sides. The bristol is highly finished and non-bending. It may be either a four drainer or cylinder machine product. See Translucents.

(2) In England, a general terms for bristol board,"

9. It also gives meaning to the word "cardboard" as under:

"Cardboard: A general term applied to boards 0.006 of an inch or more in thickness, where stiffness is the paramount characteristic. The word cardboard as used by the public is too vague to be technical. In the paper industry the term board is generally used in combination words indicating its character or use. See: Blanks, bristols, Postcard bristol, Railroad Board, Thick china, Tough check, Translucents, etc."

10. From this it appears that Ivory Board is required to be quoted. In any case, the Department has failed to prove that imported Boards were ivory boards and not cardboards. Once there is a definite finding given by the concerned authority that the item imported by the appellant was uncoated one, there was nothing, on record to establish that it was Ivory board. There is no other reason given by the tribunal in holding that imported items were Ivory board. There is no admission by the Director of the appellant that imported item was Ivory board. In this view of the matter, we are not required to consider the contention of the learned counsel for the appellant that licences issued to the appellant nowhere provide that import is confined to cardboards which are not ivory boards.

11. In the result, the impugned judgment and order passed by the Collector of Customs confirmed by CEGAT requires to be set aside and is hereby set aside and appeal is allowed. Redemption fine, if paid, be refunded.

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