CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

Appeal No.C/173/2010

[Arising out of Order-in-Appeal C.Cus.No.63/2010 dt. 06.01.2010 passed by the Commissioner of Central Excise (Appeals), Chennai]

BEML Ltd. Appellant

Versus

Commissioner of Customs (Port-Import)
Chennai Respondent

Appearance:

Shri P. Sridharan, Advocate
For the Appellant

Shri K. Veerabhadra Reddy, JC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 26.10.2017

FINAL ORDER No. 42428/2017

Per Bench

The facts of the case are that the appellants had filed Bill of Entry dt. 27.06.2006 declaring the items as "Track Shoes Collection Hot Rolled of Length 560 mm" and availed concessional duty benefit

Customs, Excise & Service Tax Appellate Tribunal of 7.5% BCD under Sl.No.207 of Notification No.21/2002-Cus. and cleared the goods under Risk Management System (RMS) facility. Subsequent to clearance of goods on Post Clearance Audit (PCA), it appeared to the department that the gods are actually parts of Excavator and merit classification under CTH 84314990 and not under CTH 72287011 as declared. Proceedings initiated against the appellant culminated in adjudication order dt. 01.05.2008 which held that the imported goods are not eligible for benefit of Customs duty exemption Notification No.21/2002-Cus.; that they are required to be classified under CTH 84314990. Demand of differential duty of Rs.13,38,951/- along with interest thereon was also confirmed In appeal, Commissioner (Appeals) vide impugned order dt. 06.01.2010 upheld the order of adjudicating authority. Hence this appeal.

2. Today when the matter came up for hearing, on behalf of appellant ld. Advocate Shri P. Sridharan submits that appellant is a regular importer of Track Shoes Hot Rolled Sections which are made to undergo further processes like cutting, drilling, notching, heat treatment, shot blasting etc. and thereafter only that these processes the imported goods would become a track shoe. To support his argument, Ld. Advocate also submits photographs of hot rolled

Customs, Excise & Service Tax Appellate Tribunal sections imported by them and also photographs of various processes to which they are subjected to.

3. On the other hand, Ld. A.R submits that the goods had already been cleared by the appellant on the Risk Management System of the Customs department. It was only on Post Clearance Audit that the discrepancy was noticed and proceedings initiated against the appellant. Ld. AR takes us to the invoice accompanying the goods on page 57 of the appeal book to contend that the goods imported were actually track shoes and not sections. Ld. AR therefore has argued that the impugned order does not call for any change.

4. Heard both sides and have gone through the facts. The photographs submitted by the ld. Advocate are definitely not of the goods imported but possibly other hot rolled sections imported by the appellant. Discernably, the goods covered by the present importer had been cleared and were not actually available at the time of PCA though the Bill of Entry it is declared that the goods are Hot Rolled Sections, nonetheless, the invoice dt. 29.04.206 of Passini Group, Germany shows that the goods have been invoiced as "TRACK GRP SALT 1G SHOE". Below this, the item has been indicated as "BEML PART NO.175-32-01758". It has also been indicated in the invoice that the shipment of track shoe is being done as per the purchase

order. The appellants have not been able to sufficiently rebut these facts given in the invoice. In any case, the goods are not available at the time of the PCA. In the circumstances, we find that appellant has not been able to satisfactorily counter the allegations made by the department.

5. Ld. Advocate has also claimed that the issue has been decided in favour of appellant by Commissioner (Appeals) vide OIA No.486-489/2009 dt. 8.6.2009 wherein it was held that the goods are classifiable under CTH 7228. In the first place, we are of the view that this claim will not help their case since it is not proved that the goods imported in both these appeals are the same. Secondly, it has also not been informed whether the department's non-filing of appeal by the department has been done on the basis of merits of the case or on the basis of pecuniary ground as per the National Litigation Policy.

6. This being so, appeal will not succeed and is therefore dismissed.

(dictated and pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

Sulekha Beevi
(Sulekha Beevi ~~C.S~~)
Member (Judicial)

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