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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. C/223 /2010-225 & 227 /2010 - CU[DB] Date **24/01/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S. SAMIR OPTICS
5120, BALLIMARAN,
DELHI – 110 006

M/S. SAMIR OPTICS & Others Appellant

Vs

C.C. (ICD) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order C/40-43/ 2011 CU[DB]** dated 21.01.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C. (ICD) NEW DELHI
ICD, TUGHLAKABAD,
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2. Adv. / Consult
MR.PIYUSH KUMAR,ADV
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NEW DELHI – 110 024.
3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
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15. M/S. ARORA TRADERS,
121-122, GALI KANDLIE KASHAN,
FATEHPURI, DELHI.

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Customs Appeal No. 223-225 & 227 of 2010

[Arising out of Order-in-Appeal No. CC(A)/Cus/ICD/21-24/10 dated 31.3.2010 and CC(A)/Cus/I&G/ICD/25/10 dated 31.3.2010 both passed by the Commissioner of Customs (Appeals), New Delhi]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : Yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether Their Lordships wish to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : Yes

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M/s. Sameer Optics
Arora Traders — Appellants M/s.

Vs.

Commissioner of Customs
New Delhi. — Respondent

Appearance:

Shri Piyush Kumar, Advocate for the Appellants
Shri K.K. Jaiswal, DR for the Respondent

Date of Hearing/decision : 14.01.2011

Final. **ORAL ORDER NO. C/ 40-43/11**

Per M. Veeraiyan:

These appeals involve common issues and, therefore, are being dealt with by this common order.

2. Heard both sides.

3. The appellants imported consignments of assorted sun glasses claimed classification under Customs Tariff heading 90041000 and for CVD under Central Excise Tariff Heading 90041000. They claimed exemption from payment of CVD under S.No.27 of the Notification No. 10/2006-CE dated 1.3.2006. Original authority held that the imported sun glasses fall under heading 90041000 and that they are not eligible for exemption under S.No.27 of Notification No. 10/06. Commissioner (Appeals) has upheld the orders of the original authority denying the exemption.

4. Learned advocate submits that sun glasses are one variety of goggles; they are classifiable under CETH 900410 and are exempted from CVD under either of the Notifications i.e. 10/2006 and/or 6/2006. It is also claimed that the import of identical items through other ports are being allowed clearances extending the said exemption. It was also submitted that Commissioner (Appeals), in subsequent orders, relating to the appellant M/s. Sameer Optics vide order-in-appeal No. CC(A)/Cus/ICD/137-141/10 dated 5.10.2010 has allowed the benefit of the Notification after taking into account the decision of the Tribunal in the case of Ergo Auto Ltd. vs. CCE, Faridabad reported in 2004 (166) ELT 60 (Tri-Del).

5. Learned DR reiterated the findings and reasoning of the Commissioner (Appeals).

6.1 We have carefully considered submissions from both sides and perused the records. Customs Tariff heading 9004 reads as under:

" **9004 SPECTACLES, GOGGLES AND THE LIKE, CORRECTIVE, PROTECTIVE OR OTHER**

9004 10 00	-	Sunglasses	u	10%
9004 90	-	Other:		
9004 90 10	--	Passive night vision goggles	u	10% -
9004 90 20	--	Prismatic eyeglasses for reading	u	10% -
9004 90 30	--	Other	kg.	10% - "

6.2 The HSN explanatory notes appended to heading 9004 reads as under:-

"the HSN Explanatory Notes appended to Heading 9004 which reads as under:

"90.04 - **SPECTACLES, GOGGLES AND THE LIKE, CORRECTIVE, PROTECTIVE OR OTHER.**

9004.10 - **Sunglasses**

9400.90 - **Other** "

This heading covers articles (usually comprising a frame or support with lenses or shields of glass or other material), for use in front of the eyes, generally intended either to correct certain defects of vision or to protect the eyes against dust, smoke, gas, etc. or dazzle; it also covers spectacles for viewing stereoscopic (three-dimensional) pictures.

Spectacles, pince-nez, lorgnettes, monocles, etc. used for correcting vision, generally have optically worked lenses.

Protective spectacles and goggles generally consist of plane or curved discs of ordinary glass (whether or not optically worked, or tinted), of safety glass, of plastics (poly(methyl methacrylate) polystyrene, etc.) of mica, or of metal (wire gauze, or slotted plates). These articles include sunglasses, spectacles used for mountaineering or winter sports, goggles for airmen, motorists, motor-cyclists, chemists, welders, foundry workers, moulders, sand-blast machine operators, electricians, roadmen, quarrymen, etc.

The heading also includes goggles for underwater use; removable spectacles (e.g., sunglasses) for fitting to other spectacles (generally corrective spectacles) and used either as protective filters or, in some cases, as additional corrective lenses; polarising spectacles fitted with lenses of plastics for viewing three-dimensional films (whether or not with a paperboard frame)."

6.3 The Tribunal in the decision in the case of Ergo Auto Ltd. cited supra has held that sunglasses as one variety of goggles with the following observations and findings:

"4.2 Sunglasses which is one variety of goggles has been placed under sub-heading 9004.10 specifically. Further, this sub-heading covers only sunglasses other than those used for correcting vision. All other articles covered by Heading 9004 are classifiable under sub-heading 9004.90. As per the New Oxford Dictionary of English, Indian Edition, sunglasses mean "glasses tinted to protect eyes from sunlight or glare". It is thus apparent that the sunglasses have specific function of protecting the eyes from sunlight or glare. It cannot be said that driving glass manufactured by the appellants are only glasses tinted to protect the eyes from sunlight or glare. The Appellants have emphasised that the driving goggles are used for both in day time as well as in the night for the purpose of protecting the eyes of motor-cyclists from dust particles, flying mosquitoes, wind etc. The reliance of the Revenue on the HSN Explanatory Notes does not advance their case. The Explanatory Notes rather describe the various types of protective spectacles and goggles. According to the Explanatory Notes protective spectacles and goggles include, "sunglasses, spectacles used for mountaineering or winter sports, goggles for airmen, motorists, motor-cyclists, chemists etc." If the contention of the Revenue is accepted, goggles meant for chemists, welder, foundry workers would also be covered by the term sunglasses. In fact the Explanatory Notes separately mention the sunglasses and goggles for motorists and motor-cyclists. In view of this, we hold that driving goggles are not covered by the term sunglasses. Accordingly, driving goggles are classifiable under sub-heading 9004.90. We therefore, set aside the impugned order and allow all the appeals."

6.4 It is also seen that Commissioner (Appeals) for subsequent period taking into the consideration the decision in the case of the Ergo Auto Ltd. has allowed the exemption for sun glasses under S.No. 27 of the Notification No. 10/2006

6.5 Notification No. 10/2006 extends exemption to 'sunglasses for correcting vision and goggles'. Since Sun glasses have been held to be one variety of goggles by the Tribunal in the decision in the case of Ergo Auto Ltd., and it has not been shown that the said decision has been set aside or stayed by a higher forum. Therefore, the exemption claimed by the appellants deserves to be extended. As already noted, the Commissioner (Appeals) has extended such benefits for the subsequent period in respect of one of the appellants M/s. Sameer Optics.

7. In view of the above, the appeals are allowed with consequential relief as per law.

(Archana Wadhwa)
Member(Judicial)

(M. Veeraiyan)
Member(Technical)

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