CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 11.08.2017
Date of Pronouncement: 25.09.2017

Appeal No. C/50923/2017-CU[DB]

[Arising out of the Order-in-Appeal No. CC/A/CUS/D-II/ICD/TKD/IMP/61/2017 dated 27.01.2017, passed by the Commissioner of Central Excise, New Delhi]

C.C. New Delhi (ICD TKD) … Appellant

Vs.

M/s. Shyam Trading Co. ... Respondent

Appearance:
Present Shri Govind Dixit, DR for the appellant
Present None for the respondent

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Technical Member

FINAL ORDER No. 56733/2017

Per V. Padmanabhan:

The present appeal is against the Order-in-Appeal No. 61/2017 dated 27.01.2017.

2. The respondent - importer filed Bill of Entry no. 7663757 dated 11.12.2014 for import of goods declared as Incense stick 8' MM 9" MM "Incense stick (unperfumed)" and classified the same under Chapter heading 33074100 claiming benefit of Sl. No. 394 (I) of Notification no. 046/2011 dated 01.06.2011 having duty as 6%(BCD) + 0%(CVD) + 4%(ACD) +2%(Edu.Cess) + 1%(H.Edu.Cess) overall duty leviable @ 10.43% adv.

3. However, the Department was of the view that such goods cannot be classified under 33074100 as agarbatis since the

imported goods were unperfumed and cannot be considered as odoriferous substances. Hence, a view was taken that the goods will not be entitled to benefit of CVD exemption under notification no. 46/2011 dated 01.06.2011 (Sl. No. 394). It was further observed that the goods were also undervalued. Accordingly, the value was re-assessed on the basis of NIDB data and customs duty was demanded by denying the CVD exemption. Aggrieved by the assessment order, the importer carried the matter to Commissioner (A) who decided the issue in their favour, by setting aside the charge of undervaluation as well as accepting the declared classification. Aggrieved by the order, Revenue has filed the present appeal.

4. With the above background, we have heard Shri Govind Dixit, DR for the appellant and none appeared for the respondent inspite of sending notice.

5. Explaining the grounds of appeal, Ld. DR submitted that the imported goods cannot be considered as agarbatties since they are unperfumed. The case law ***Ranga Rao & Sons Vs. CC Chennai 2007 (218) ELT 146 (Tri-Chennai)*** relied by the Commissioner (A), is not applicable to the present case. In that case the imported goods were tested and found to give out pleasant smell. In the present case, samples were not tested and the goods are declared as not perfumed. Accordingly, he prayed that impugned order be set aside and the original order be reinstated.

6. The Customs tariff heading 33074100 covers agarbatti and other odoriferous preparation which are operated by burning.

The imported goods, though described as incense stick, are unperfumed and hence, cannot be covered by the above customs tariff heading since they cannot be considered as odoriferous preparation. That rules out their classification under 33074100.

7. The case law ***Ranga Rao & Sons Vs. CC Chennai (Supra)*** relied upon by the Commissioner (A) is distinguishable from the present one. In the present case the goods are clearly unperfumed and hence cannot be considered as agarbati. Accordingly the benefit of CVD exemption under Notification no. 46/2011 dated 01.06.2011 will not be available to the imported goods.

8. Regarding the charge of undervaluation, the Commissioner (A) has recorded that the Department has not given any evidence of contemporaneous import for re-assessing the value. Accordingly, we find no reason to interfere with such findings.

9. In view of the above, appeal filed by the Revenue is partly allowed in respect of classification but rejected in respect of valuation. Impugned order is modified.

[Order Pronounced in the open court on 25.09.2017]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Technical Member

Bhanu