CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 16.11.2017
Date of Decision: 23.11.2017

Appeal No. C/51197/2017- [DB]
[Arising out of the Order-in-Appeal No. CC(A) CUS/D-II/Prev/193/2017 dated 29.03.2017, passed by The Commissioner, (Appeal), Customs, New Delhi.]

Champion Electrical Industries. … Appellant

Vs.

CC New Delhi … Respondent

Appearance:
Present Shri T.K. Srivastava, Advocate for the appellant
Present Shri Govind Dixit, DR for the respondent

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

FINAL ORDER No. 58039 /2017

Per: V. Padmanabhan

1. The appeal is against the Order-in-Appeal No. 193/2017 dated 29/03/2017. The appellant imported certain electrical items and filed bill of entry declaring them as part of electrical items. When the goods were examined by customs they were found to contain complete induction cookers but packed in knocked down condition. After examination of goods the Customs officers were of the view that complete induction cookers have been misdeclared as parts of electrical goods. It was further noticed that the goods were also undervalued. In terms of the interpretative Rule 2 (a) of Customs

Tariff, the imported goods, which are presented in completely knocked down form of induction cookers were to be assessed as complete goods. Such goods were to be valued under section 4A of the Central Excise Tariff Act on the basis of MRP for the purposes of charging countervailing duty. The goods were detained by Customs.

2. Shri Sushil Kumar Aggarwal, Manager of the appellant in his statement dated 13/12/2013, voluntarily waived the issue of show cause notice and personal hearing, paid the differential duty as computed by the customs authorities and cleared the goods after furnishing a bond for an amount of Rs. 22 lakhs along with bank guarantee for Rs, 2,20,000/-. Subsequently, the lower Authorities ordered confiscation of the goods and imposed redemption fine of Rs. 75,000/- as well as penalty of Rs. 37,736/-. Aggrieved by the impugned order the present appeal has been field.

3. With above background we heard Shri T. K. Srivastava, Ld. Counsel for the appellant and Shri Govind Dixit, Ld. DR for the Revenue.

4. The Ld. Advocate submitted that the authorities below have passed the impugned order without issue of show cause notice and without giving personal hearing. He further argued that there was no provision to confiscate the goods in the absence of seizure of the said goods. Consequently, he submitted that the redemption fine as well as penalty may be set aside.

5. Ld. DR justified the impugned order. He pointed out that the show cause notice as well as personal hearing were specifically waived by Shri Sushil Kumar Aggarwal, Manager, and hence the lower Authorities have passed the orders without show cause notice and personal hearing. He further pointed out that the differential duty demanded has already been accepted and paid by the importer. Further, the appellant had executed bond and bank guarantee only to cover the possible confiscation of the goods.
6. After hearing both sides and perusal of record, we find that the appellant had imported electrical induction cookers in CKD form. Upon inspection, the goods were found to be complete induction cookers, but packed in disassembled form. Such goods are required to be assessed as complete induction cookers in view of Interpretative Rule 2 (a) of the Customs Tariff. In view of the misdeclaration noticed in respect of description as well as valuation, the goods are liable for confiscation. Hence confiscation under Section 111 of Customs Act is upheld.
7. Induction cookers are to be charged to CVD on MRP basis, under Section 4A of the Central Excise Act, 1944. The appellant has admitted the misdeclaration and has already paid the differential duty before clearing the goods. The main ground agitated before us is that no confiscation can be ordered of the goods without seizing the same.

We note that the imported goods are in the custody of customs till such time the goods are allowed to be cleared. In the present case such clearance has been allowed only after the execution of bonds and bank guaranty, pending adjudication of offence. We find no infirmity in the order passed by lower Authority confiscating the impugned goods for miss declaration. The redemption fine and penalty imposed are reasonable and hence upheld.

8. In view of the above discussion impugned order is upheld and appeal dismissed.

[Order Pronounced in the open court on_23/11/2017__]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

Rekha