

CASE NO.:
Appeal (civil) 5745-5755 of 2002

PETITIONER:
Super Cassettes Industries Ltd

RESPONDENT:
Commissioner of Customs, New Delhi

DATE OF JUDGMENT: 13/03/2008

BENCH:
ASHOK BHAN & J.M.PANCHAL

JUDGMENT:
JUDGMENT
O R D E R
CIVIL APPEAL NOS.5745-5755 OF 2002

The present appeals have been filed by the assessee under Section 130E of the Customs Act, 1962 (for short 'the Act') against the impugned final Order Nos.79-89/2002-B dated 19.2.2002 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as 'the Tribunal') in Appeal Nos.C/478-488/2001-B. By the impugned order the Tribunal has rejected the appeals filed by the appellant.

Brief facts of the case are that the Appellant is engaged in the recording of audio cassettes falling under Heading 85.24 of the Schedule to the Central Excise Tariff Act. Recording is done on audio cassette recorders of which magnetic head is an essential ingredient. Magnetic heads are imported and with regular use they get worn out and have to be sent abroad for re-lapping as no such facility is available in India. Eight consignments of magnetic heads were sent/exported to Singapore for repairs/re-lapping under shipping bills. On its re-import after repairs against the said bills of entry, the appellant claimed concessional customs duty under Notification No.94/96-Cus. dated 16.12.1996 and countervailing duty (for short 'CVD') on the ground that no central excise duty is leviable on the repaired goods in India.

The authority-in-original accepted the plea of the appellant that on re-import of repaired goods, the benefit of Notification No.94/96-Cus. dated 16.12.1996 for charging customs duty was available to it. He, however, charged CVD on repaired goods which was paid by the appellant under protest as the goods were urgently required in its factory. An appeal was filed against this part of the order of the Assistant commissioner on the Bills of Entry itself.

The Commissioner(Appeals) allowed the appeal by way of remand with the directions "I remand the matter to the assessing authority and direct him to pass an appealable speaking order in the matter after extending proper opportunity to the appellants to defend themselves". Thereafter, the Deputy Commissioner passed an order saying that CVD is leviable on the imported goods without making any distinction between new and repaired magnetic heads. The appeal filed against the order passed after remand by the Deputy Commissioner was dismissed by the Commissioner of Customs(Appeals).

Appellant, being further aggrieved, filed appeals before the Tribunal which have been dismissed by the order impugned before us. It has been held by the Tribunal that in view of Section 20 of the Act on the re-importation of goods, the duty leviable would be the same as would have been levied on the importation of goods for the first time.

Counsel for the parties have been heard.

Counsel appearing for the appellant relying upon a Constitution Bench Judgment of th

is Court in the case of Hyderabad Industries Ltd. vs. Union of India reported in 1999 (108) ELT 321(SC) contends that CVD is levied under Section 3(1) of the Customs Tariff Act, 1975 (for short 'the Tariff Act') on all imported goods. The CVD is leviable on all imported goods equal to the excise duty on a like article if produced or manufactured in India and chargeable to central excise duty but if such goods are not obtained by a process of production or manufacture then no CVD is leviable. Hence, what is important for the purpose of levy of CVD is the question as to whether the imported articles have been obtained by a process of manufacture. Since, in the present case, no manufacturing process has taken place and the magnetic heads have simply been repaired, the CVD was not leviable.

As against this, counsel appearing for the revenue relying upon a three Judge Bench judgment of this Court in the case of Tata Tea Ltd. vs. Commissioner of Customs, Chennai reported in (1999) 9 SCC 522 contends that under Section 20 of the Act read with the definition of "import" as given in Section 2(23), imported goods would include re-imported goods as well and therefore the goods sent/exported out of India and re-imported would also be liable to payment of duty in the same manner in which it would have been liable if imported for the first time in India.

After hearing counsel for the parties at length, we are of the opinion that the findings recorded by the Tribunal cannot be faulted with.

Section 20 of the Act reads as under:

"Re-importation of goods\027If goods are imported into India after exportation therefrom, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof."

A reading of Section 20 makes it abundantly clear that the goods re-imported after exportation would be liable to duty and be subject to all the conditions and restrictions to which goods of the like kind and value are liable or subject on the importation thereof.

Counsel appearing for the appellant has fairly conceded that when the magnetic goods were imported for the first time, appellant had paid the basic customs duty as well as CVD. It is also not disputed that after importation the goods were exported and then re-imported.

If that be so, on the re-importation of the goods the appellant would be liable to pay the same duty on the goods re-imported as had been paid when the goods were imported for the first time. This contention of the counsel for the revenue is fully supported by the law laid down by this Court in Tata Tea Ltd. (supra). In para 7, this Court, inter alia, observed as follows:

"Having heard the learned counsel for the parties, we are of the opinion that the order of the Tribunal cannot be found fault with. Under Section 20 of the Customs Act, 1962 read with the definition of "import" as given in clause (23) of Section 2 imported goods would include reimported goods as well and therefore the goods sent out of India and reimported would also be liable to payment of duty in the same manner in which they would have been liable if imported for the first time in India. In the matter of goods sent out for repairs only there is Exemption Notification No.204/76. The benefit thereof has been taken by the appellant....."

For the reasons state above, we do not find any merit in these appeals and dismiss the same with costs.