

2016 (4) TMI 608 - CESTAT KOLKATA

M/s. M.R.K. Impex Pvt. Ltd. Versus Commissioner of Customs (Prev.) , Kolkata

No.- Customs Appeal No. 75332/2014

Order No.- Order No : FO/A/75266/2016

Dated.- April 8, 2016

SRI H.K. THAKUR, TECHNICAL MEMBER

For the Petitioner : Shri K.P. Dey, Advocate & Sri H.K. Pandey, Advocate

For the Respondent : Sri A. Kumar, A.C. (A.R.)

ORDER

PER SRI H.K. THAKUR

This appeal has been filed by the appellant with respect to Order-in-Appeal No. 4/Cus (Prev)/KOL/(CCP)/2014 dated 22/01/2014 under which first appellate authority has modified Order-in-original dated 7/2/2013 by imposing a redemption fine of ₹ 2,30,000/- with respect to 125 MT of defective confiscated shafts and imposed penalties of ₹ 1.00 Lakh each with respect to bill of entry No. 1117116/10 dated 10/2/2010 and bill of entry No. 0352116/09 dated 13/01/2010.

2. Shri K.P. Dey, Advocate and Shri H.K. Pandey, Advocate appeared on behalf of the appellant. Shri K.P. Dey argued that appellant has imported defective shafts under two bills of entry No. 01117116/10 dated 10/2/10 and bill of entry No. 0352116/09 dated 13/1/2010 and classified the same under Customs Tariff Heading 84831099 as capital goods. That as per para 2.17 of the hand book of procedures under Foreign Trade Policy, only the second hand goods other than capital goods are stated to be restricted. That in the case of the appellant goods classified under Customs Tariff Heading 84831099, were capital goods. Therefore, the same were not restricted under the Foreign Trade Policy and no redemption fine/penalty was attracted upon the appellant.

3. Shri A. Kumar, A.C. (A.R.) appearing on behalf of the Revenue argued that the goods were not imported in the form of complete intact defective shafts but in the form of pieces of the shafts as scrap and declared the same under Customs Tariff Heading 84831099. Ld. A.R. strongly defended the order passed by the first appellate authority.

4. Heard both sides and perused the case records. The goods imported by the appellant under bills of entry No. 01117116/10 dated 10/2/10 and bill of entry No. 0352116/09 dated 13/01/10 were declared as defective shafts and classification was claimed as capital goods under Customs Tariff Heading 84831099. In para six of Order-in-Appeal No. 4/CUS(Prev.)/KOL/(CCP)/2014 dated-22/01/2014, it has been held by the first appellate authority that imported goods are parts of capital goods being shafts of ship. As per para 2.17 of the hand book of procedures under Foreign Trade Policy only following categories of goods are prohibited. Para 2.17 is reproduced below:

“Second Hand Goods: All second hand goods, except second hand capital goods, shall be restricted for imports and may be imported only in accordance with provisions of FTP,TTC(HS) HBP v1, Public Notice or an Authorisation issued in this regard.

Import of second hand capital goods, including refurbished/re-conditioned spares shall be allowed freely. However, second hand personal computers/laptops, photocopier machines, air conditioners, diesel generating sets will only be allowed against a licence.

Import of re-manufactured goods shall be allowed only against a licence.”

4.1 A perusal of the above provisions convey that all second hand goods except second hand capital goods, are only restricted. In the present case, it is not disputed by the Revenue that the imported goods are not capital goods being shafts of ships. By virtue of the wordings of para 2.17 of the hand book of procedures under Foreign Trade Policy, the goods imported by the appellant were thus not restricted. Even if it is considered that the shafts were cut into small pieces of different sizes then also the same has to be considered as scrap for which no license is required.

5. In view of the above observations, defective shafts imported by the appellant were not prohibited/restricted goods under para 2.17 of the hand book of procedures under Foreign Trade Policy. Accordingly, the confiscation of goods and imposition of penalties upon the appellant were not justified. The appeal filed by the appellant is allowed with consequential relief, if any.

(Operative part of the order already pronounced in the open Court)