

Chhaganlal and Sons Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-07-1983

Reported in : (1984)(16)ELT502Tri(Mum.)bai

Appellant : Chhaganlal and Sons

Respondent : Collector of Customs

Judgement

1. This is an appeal to this Tribunal and is directed against the order dated 30-11-1982 of the Collector of Customs (Appeals), Bombay upholding the order (Original) dated 17-2-1982 passed by the Deputy Collector of Customs, Bombay confiscating 13 post parcels of surgical threads imported by the appellants for having contravened Section 11 l(d) of the Customs Act, 1962.

2. The facts giving rise to the dispute, in brief, are that the appellants produced for Customs clearance of the aforesaid goods an import licence No. 2897702 dated 12-2-1980. The said licence which was a R.E.P. licence for the export of leather goods bore an endorsement in the following terms : - "This licence will also be valid for import of OGL items under para 185 of Import Policy, 1981-82 subject to the conditions laid down and shall be non-transferable." The said para 185 provides that, on the import replenishment licences issued in their own names or transferred to them by others, Export Houses will be entitled to import inter alia "Raw materials, components, consumables and spares (excluding items covered by Appendix 5) which have been placed on Open General Licence for Actual Users".

The lower authorities held that the imported surgical threads were not raw materials but fully manufactured material requiring only to be sterilised (which, according to them, was not a manufacturing process).

On this basis, they held that the licence was not valid to cover the imported goods. The adjudicating authority- Deputy Collector-confiscated the goods under Section 111(d) of the Customs Act but allowed the goods to be redeemed on payment of a fine of Rs. 15,000.00. The appeal against the Deputy Collector's order did not meet with success. Hence the present appeal.

3. In the appeal before us-and, in the hearing on 22-9-1983 before us when, Shri Balani, Advocate represented the appellants-it has been urged that the imported non-sterilised linen surgical thread was raw material for manufacture of sterilised surgical sutures and as such was covered by the licence. Reference has been drawn to the CCCN (Customs Co-operation Council Nomenclature) Explanatory Notes under heading 30.50-Volume 1, page 460-whereby sterilised sutures fall under the said heading as pharmaceutical goods whereas non-sterile textile yarns fall in Section XI

("Textiles and Textile Articles"). The process of sterilisation is not a simple one and amounts to a process of manufacture. Encyclopaedia Britannica was referred to in this context.

The appellants also submitted that the benefit of release similar goods in the past should be extended to them. Shri Balani also referred to Appendix 7 of the 1982-83 Policy to show that even goods like wheels and tyres are regarded as raw materials by the LT.C. authorities.

4. Shri Gidwani, Sr. D.R. contended on behalf of the Respondent that the appellants were not actual users of the imported surgical threads.

The goods are required for actual use, after sterilisation, by hospitals which were not industrial actual users. Appendix X, Sr. No.128, specified "Sutures" but the imported goods were not "Sutures".

5. We have carefully considered the submissions of both sides. The CCCN Notes referred to by the appellants, though not directly relevant for our present purpose, are useful inasmuch as they show that, in international trade parlance, catgut, kangaroo tendon, silkworm gut, textile yarns and metal wire used for surgical purposes are known as suture materials. If they are non-sterile, they are classified (for the purpose of the CCCN) according to their constituent material.

Nevertheless they are known as non-sterile suture materials. The present goods are invoiced as "Linen surgical thread non-sterilised".

6. Now, Appendix 10 sets out the items allowed to be imported by different categories of actual users under O.G.L. and the conditions governing their importation. The first item reads : "Raw materials, components and consumables (non-iron and steel items) other than those included in the Appendices 3, 5, 8, 9 and 15" for import by actual users (industrial). The learned Counsel for the appellants made a statement before us that the present goods were not specified in Appendices 3, 5, 8, 9, or 15-and this submission was not controverted by the learned Sr. D R. There is another item in Appendix 10 to which both sides have not referred viz. : -Sr. No. 5. "Raw materials, components, consumables, machinery, equipment, instruments, accessories, tools and for import by, among others, hospitals recognised by the Central or a State Government.

Admittedly, the appellants are not a hospital and question of invoking the benefit of Sr. No. 5 would not arise. Nor, as Shri Gidwani has contended, do the present goods fall under Sr. No. 128 of List 6 of Appendix 10 which refers to "Surgical Sutures, blades and scalpels".

7. The question, therefore, arises whether the imported goods can be deemed to be raw materials permissible for import in terms of Sr. No. 1 for industrial actual users. As we have noted earlier, para 185 of the 1981-82 Policy permits Export Houses to import inter alia raw materials which have been placed on O.G.L. for Actual Users. Non-sterilised surgical thread is, in our view, certainly a raw material for manufacture of sterilised surgical suture. It would be permissible for import by an actual user, viz. an importer who has the facility for sterilising the non-sterile thread. Sterilisation, as the extracts from page 995 (Volume 1) of Encyclopaedia Britannica (relied upon by the appellants) shows, is the complete destruction of all micro-

organisms by a suitable chemical agent or by heat, either wet steam under pressure at 120C (250F) or more, for at least 15 minutes, or dry heat at 160 to 180G (320 to 360F) for three hours. It is, in our opinion, futile to contend that there is no manufacturing process involved here. The question is not whether the appellants would be sterilising the imported goods, but whether the imported goods could be appropriately termed as raw material if imported by an actual user. We are of the view that they could be. And para 185 permits Export Houses to transfer raw materials imported by them in terms of that para to be eligible Actual Users which shows that the importer need not use the raw material himself but could transfer it to an eligible Actual User.

8. In the above view of the matter, we hold that, in the instant case, the imported goods were covered by the licence produced by the appellants. We allow the appeal and direct that the redemption fine, if already paid, shall be refunded to the appellants within 3 months from the date of communication of this order.

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