Component Corpn. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-19-1996

Reported in : (1997)(68)LC105Tri(Delhi)

Judge : U Bhat, S T K.

Appellant : Component Corpn.

Respondent : Cc

Judgement :

1. Appellant claiming to be a manufacturer of photocopying machines, imported under OGL several consignments of toners, developers and photo conductor drums said to be either consumables or components of photocopying machines in the purported capacity as an actual user and declared certain values which were accepted and on that basis goods were cleared on payment of duty. Subsequent investigation showed that the appellant was not engaged in the manufacture of photocopying machines and was not an actual user of the imported articles and, therefore, there was violation of actual user conditions regarding consumables and drum (components) and also violation of requirement of specific licence in regard to the drum (component) which was a restricted item under item 470 of Appendix 3 Part A of 1985-88 Policy.

Investigation also showed that there was gross undervaluation in the import documents. Investigation also showed that the invoices produced were not really by the Singapore supplier and were created by the appellant using blank invoice forms and rubber-stamp of the supplier.

There was further material to show that the appellant sold all the imported articles. Since there were prima facie materials to show that the appellant was guilty of fraud, deliberate misdeclaration and intentional misrepresentation of facts, invoking larger period of limitation under the proviso to Section 28 of the Customs Act, 1962, notice was issued to the appellant to show cause against demand of differential duty and against imposition of penalty. The appellant failed to submit reply and went on asking for copies of documents.

Thereupon, the Collector passed the impugned order agreeing with the material averments in the Show Cause Notice and confirming the demand and imposing penalty of Rs. 2 lakhs on the appellants. It appears separate Show Cause Notices had been issued earlier. They were directed to be withdrawn by the impugned order. Appellant being aggrieved has filed the present appeal.

2. The matter arises in relation to 11 consignments covered by 11 Bills of Entry during the period 31.8.1985 to 22.10.1985. Of the 11 Bs/E 2 relate to drums of photo copying machines and the rest relate to tonor.

Under one of the Bs/E, developer was also imported. Tonors and developers would fall under item 1 as well as item 30 of Appendix 6 of the relevant Policy. Item 1 refers to raw materials, components and consumables other than those included in Appendices 2, 3 Part A, 5 and 8, the eligible importer being actual user (industrial). Item 30 takes in photographic chemicals such as developers, tonors etc., eligible importer being actual user registered under the local law applicable to shops and establishments or laboratories certified as processing or testing laboratories by the State Director of Industries. The drum of the photocopier being a component falls under item 470 of Part A of Appendix 3 and would not, therefore, fall under item 1 of Appendix 6.

While an actual user (industrial) can import the developer and tonor under OGL, any person can import components of photocopying machines which are restricted items, only under a specific licence. Admittedly, appellant had no specific licence, though the appellant claimed to be an actual user (industrial). The other dispute relates to the undervaluation.

3. As and when the consignments arrived, import documents were submitted and the Custom House accepted the documents, assessed the consignments, imposed duty and on payment of duty the consignments were cleared. Thus assessment under Section 47 of the Act had been completed in regard to those imports. It is contended for the appellant that in this view the matter could not be reopened under Section 28 of the Act and could be reopened only under Section 129D of the Act. The Supreme Court in Union of India v. Jain Shudh Vanaspati Ltd. has held that procedure under Section 28 is available only where clearance had been made under Section 47 of the Act and, therefore, the Department cannot be restricted to the remedy under Section 129D of the Act and that the procedure under Section 28 cannot be excluded. Hence the contention fails.

4. The next contention is that the Show Cause Notice was barred by time, inasmuch as it was filed after the expiry of six months from the relevant dates, though within five years of the relevant dates. The Show Cause Notice allege fraud, deliberate mis-declaration and misrepresentation of facts in regard to valuation as well as ITC angle.

If the import was to be made of these articles under OGL, actual user condition must be satisfied. The import documents contained declaration that the appellant was importing the articles in question as an actual user industrial. The appellant had obtained a provisional SSI certificate from the Industrial Department of the State. It was, in these circumstances, that the Custom House accepted the eligibility for import under OGL. The Department subsequently collected materials to show that the appellant had no factory or establishment for manufacture of photocopying machines and had, in fact, sold the imported articles.

The Show Cause Notice as well as the impugned order referred to the materials...which documents seized from the appellant during investigation and statements recorded from Girish Arora, one of the partners of the appellant and sister of the appellant and others.

Girish Arora, the partner of the appellant, had admitted that the appellant was engaged in trading activity, that he was aware that the articles imported could not be sold, but they were actually sold as seen from entries made in several letter head forms seized from the address of the appellant. Several blank invoice forms and letterheads of the supplier as well as rubber-stamp of the supplier were also sized on the occasion. He also admitted that he had prepared the invoices in the name of the foreign supplier. He admitted that he did not own any premises and his sister was running a shop and doing photocopying job in the name of M/s. Affix Electro stats at 46, Community Centre, East of Kailash, New Delhi. That was the address of the appellant declared in the import documents also. His sister also admitted that she was running a photocopying job work. It was pointed out by Shri Agarwal that the appellant had been arrested after questioning under Section 108 of the Act and within three days of his release on bail-letter had been sent retracting the statements. But there is no case that the statement of the partner's sister had been retracted. The fact that blank invoices and rubber-stamp of the supplier had been seized from the address given of the appellant cannot be denied. It can also not be denied that the address was really that of the photocopying job centre being run by the appellant's sister. The Collector had recorded that the appellant had no manufacturing premises of his own and at the address given appellant's close relation was running the shop. He was evidently referring to the photocopying job centre being run by the partner's sister. The appellant had not put forward any case that the appellant had a manufacturing premises at an address other than the address shown in the import documents. Even if we ignore the statement of the appellant, there is sufficient material to hold that the appellant was not an actual user and had sold the imported articles, thereby violating the actual user condition attached to OGL import.

Admittedly, appellant had no licence to import photocopier components.

Appellant purportedly imported the components under Appendix 6 item 1 of the Policy which was subject to actual user condition. The clearance must have been, therefore, made treating as falling under Appendix 6 Part 1 as an actual user. Since it is proved that the appellant was not an actual user, the import under OGL was not valid.

5. We have been taken through the Show Cause Notice and the impugned order. The partner of the appellant had admitted gross under valuation of the goods at the time of clearance. He admitted to concoction of invoices of the supplier. As a matter of fact, blank invoice forms and rubber-stamp of the supplier were seized from the address given by the appellant. Thus there can be no sanctity for the declared value at all.

The impugned order refers to the other materials gathered by the Collector showing ruling prices in the international trade at the relevant time were much higher than the prices declared by the appellant. The Collector has proceeded on the basis of such higher prices. There can, therefore, be no doubt that there was deliberate gross mis-declaration of value and misrepresentation of facts.

6. On these facts, we have to consider the question of limitation raised by the appellant. About ITC angle, there was deliberate misrepresentation and suppression of facts, inasmuch as the appellant was not an 'actual user and had no status of an actual user. There was deliberate under valuation and suppression of facts. In these circumstances, we feel that the invocation of the larger period of limitation was justified.

7. It is next contended by Shri Agarwal that there was violation of principles of natural justice, inasmuch as copies of the relevant documents were not made available to enable the appellant to reply to the Show Cause Notice. Our attention has been invited to pages 36 to 51 of the paper book which contain copies of various letters sent by the appellant to the Collector or other officers of the Department. In the earliest letter dated 27.12.1985 seen at page 36, the appellant demanded copies of Bs/E, invoices and other documents relating to the seized consignments, copies of statements given by the partners and others and copies of documentary evidence sought to be relied on by the Department and copies of all documents seized from the premises. A subsequent letter says that all the documents except coy of B/E allegedly cleared in the second week of October, 1985 relating to Airway Bill dated 13.9.1985 were supplied to the appellant. There was no contention that copies of Bill of Entry relating to the subject consignments were not provided to the appellant. The solitary B/E referred to does not relate to

the subject consignments. Appellant has not shown the relevance of this document in the matter of preparation of reply to the Show Cause Notice or defending the case. Thus, we find that appellant deliberately refrained from submitting reply to the Show Cause Notice, though copies of all the documents necessary for preparation of the reply were provided. We, therefore, reject the contention that there was any violation of principles of natural justice.

8. In the circumstances referred to above, we find no ground to hold against the imposition of penalty or the quantum of penalty imposed.