

Collector of Cus. Vs. Continental Constructions Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-23-1997

Reported in : (1997)(96)ELT121TriDel

Appellant : Collector of Cus.

Respondent : Continental Constructions Ltd.

Judgement :

1. This Revenue Appeal is directed against the Orders dated 25-9-1991 of the Collector of Customs (Appeals). The respondents imported excavators and cranes which had been used in Iraq for a project. They claimed concessional rate of duty under Notification 220/90-Cus., dated 26-7-1990. This notification grants partial exemption to machinery and equipment on the condition that a Joint Secretary in the Ministry of Commerce certifies that the project for which the machinery was initially purchased has been cleared by the Working Group of the Export Import Bank of India established under Section 3 of the Export Import Bank of India Act, 1951, and a certificate issued by Chartered Engineer to the effect that the machinery has been used in the project for a period not less than 5 years. The Asstt. Collector denied benefit of exemption to excavators on the ground that after taking into account the date of invoice and the date of shipment there was hardly any time left for shipment and installation of the machinery and therefore, the certificate issued by the Chartered Engineer was suspect in regard to excavators. While Collector (Appeals) upheld this order in regard to excavators, he held that no doubts have been raised in regard to the certificate given by Chartered

Engineer in regard to cranes which were imported. He, therefore, allowed benefit in regard to crane. Revenue are in appeal against this part of the Order.

2. Arguing for the Revenue, the Id. DR submits that once a certificate has been held to be suspect other certificates also have necessarily to be presumed to be suspect and, therefore, such a certificate issued by a Chartered Engineer could not be relied upon to grant the exemption.

3. Ld. Advocate arguing for the Respondents submits that in all 4 certificates were issued by Chartered Engineer: two relating to excavators and two relating to cranes. It is true that they had not filed any appeal against that part of order which denied them exemption in regard to excavators. However, Collector's order in regard to cranes could not be doubted since no doubts were raised in regard to the certificates. This is apart from the fact that the Department did not take into account the fact that goods were shipped before the date of invoice and that invoice was despatched to secure payment for the goods subsequently.

4. We have heard both sides. Collector (Appeals) in his order has observed : "Asstt. Collector in his impugned order has not given any reasoning for not allowing benefit of the Notification No. 220/90-Cus. for the two cranes (Sl. Nos. 3 and 4) for which the appellants have submitted a Chartered Engineers certificate and for which no doubts have been raised in the adjudication order. I, therefore, admit the appellant's contention in regard to the two cranes against Sl. Nos.

3 and 4 and I order the same be allowed benefit of Notification No. 220/90-Cus." 5. Notification 220/90-Cus. grants exemption subject to the condition that an officer not below the rank of Joint Secretary in the Ministry of Commerce certifies that the project for which the machine was initially purchased has been cleared by the Working Group of the Export Import Bank of India and a Chartered Engineer certifies that the machinery has been used in the project for a period not less than 5 years. Normally, therefore, what is required on the face of it to grant exemption is the existence of these two certificates. There is no dispute regarding the certificate issued by the Joint Secretary. Our attention has been drawn to the certificate issued by the Chartered Engineer and subsequently confirmed through a telex. Both the telex and the certificate indicate chassis number and engine

number of the cranes. Certificate indicates that residual life is over 5 years.

Subsequent telex certifies that cranes were used for a period for more than 5 years in Karkh Water Supply Project, Baghdad, before exporting them to India. Even if it is assumed that one of the two certificates in regard to the excavators were suspect, we cannot necessarily infer that the certificates in regard to cranes were also suspect since no such doubts were raised by adjudication authority.

6. We do not, therefore, find any infirmity in the findings of the Collector (Appeals) that Asstt. Collector not having doubted the certificates issued by the Chartered Engineer in regard to cranes, such certificates could be accepted in allowing benefit.

7. Considering the facts and circumstances including the fact that there is no doubt about the certificates issued in regard to cranes, we do not find any serious infirmity in the findings arrived at by the Collector (Appeals).

8. In the result, therefore, we reject the Revenue Appeal and uphold the impugned order.

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