

**Vulcan Engineers Ltd. Vs. Cc**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Dec-15-1997

**Reported in :** (1998)(76)LC189Tri(Mum.)bai

**Judge :** R T Lajja, S Kang

**Appellant :** Vulcan Engineers Ltd.

**Respondent :** Cc

**Judgement :**

1. In this appeal filed by M/s. Vulcan Engineers Ltd. being aggrieved with the order-in-original dated 20.8.1992 passed by the Collector, Customs, Air Cargo Complex, Sahar, Bombay, the two issues for our consideration are - (i) relating to the Import Trade Control (ITC) Policy and (ii) relating to the applicability of exemption Notification No. 155/86-Cus. dated 1.3.1986 (as amended). The Collector of Customs, Air Cargo Complex, Sahar, Bombay had imposed a fine of Rs. 3.0 lakh on each subject Bill of Entries (there were two Bill of Entries involved and had imposed a penalty of Rs. 50,000/- on the importers for misdeclaring the goods in the import documents. He had also held that out of three items, two items were not eligible for benefit of exemption Notification No. 155/86-Cus. dated 1.3.1986.

2. We have heard Shri S.N. Kantawala, Advocate for the appellants and Shri A.K. Agarwal, SDR for the respondent Revenue.

3. We have carefully considered the matter. The appellants had applied for special licence to the Import and Export Control Authorities for import of the various goods as listed by them in the annexure to their application. The Import Control licence was issued in favour of the appellants on 8.10.1990 for the import of components as per list attached to the licence. It is seen that the details of the items for which the application had been made to the Import Control Authorities were in annexure-II to the application filed by the appellants. It is seen that the Joint Director of Industries had recommended the matter for import of total CIF value Rs. 26,90,267/- on 22.2.1990. The Import and Export Control Authorities had stamped the said list. The adjudicating authority denied the benefit of import on the ground that the licence has not been endorsed on the list of the items.

4. Shri S.N. Kantawala, Advocate explained that when the list was submitted to the Import Control Authorities, it was along with their application for licence and thus it was not possible for the appellants to know of the licence numbers which were going to be given to licence in their favour.

5. We find that the adjudicating authority had not doubted the correctness of the details or the authenticity of the list duly endorsed by the ITC Authorities. The violation of the ITC restriction had been alleged only on the ground that the list of the items did not bear the licence number. After going through the list and the relevant documents, we consider that the goods imported in this case listed at Serial Nos. 10, 11 and 12 of the list attached with the licence were covered by the said licence.

These three items had been listed separately in the list referred to above. They had also been separately mentioned in the invoice and in the Bill of Entries. The goods on examination were found to be silometer and power pack attached together. The adjudicating authority had taken a view that while separately both the silometer and power pack were eligible for import, the silometer attached with the power pack was not so eligible for the import. The appellant contended that both did not form an assembly but they are attached together by their suppliers. We consider that as both the items were eligible for import in terms of the special licence issued in their favour, it had not been made out that by attachment

altogether new product classifiable under any specific heading had come into existence, the import could not be disallowed in the facts and circumstances of this case.

6. Thus insofar as the contravention of the ITC Policy is concerned, we consider that no case has been made out by the Revenue.

7. Shri A.K. Agarwal, SDR had submitted that the goods had been misdeclared. While the goods were declared as separate items - silometer and power pack, in fact the goods imported were an assembly of the silometer and power pack. As we find that there is no finding that by attachment of silometer with power pack any new goods had emerged, we do not find any force in the arguments of the Departmental Representative.

8. Thus after taking all the relevant considerations into account insofar as the issue of ITC Policy is concerned, we set aside that part of the order which relates to the imposition of the fine and penalty.

9. Any refund in this regard will however, be subject to the observations of the Hon'ble Supreme Court in the case of Mafatlal Industries Ltd. v. UOI, 10. As regards the second issue of eligibility of exemption Notification No. 155/86-Cus. is concerned, we find that in the Bill of Entries on record it is not shown as under which tariff heading the goods had been declared by the appellant. From the Exhibit 'F' at page 37 of the paper book it is seen that the silometer, ultrasonic level sensors have been shown under Customs Tariff Heading 90. We find that the goods falling under heading No. 90 of the Customs Tariff were not eligible for the benefit of exemption Notification No. 155/86-Cus. The adjudicating authority had given the benefit of Notification No.155/86-Cus. insofar as the level sensors are concerned. The Revenue had not challenged this finding of the adjudicating authority. Thus insofar as the eligibility of exemption notification is concerned only the power pack and the silometer are alone involved in these proceedings.

The adjudicating authority had observed that both were classifiable under Chapter 90 but he had not given any specific heading/sub-heading under which the silometer along with the power pack was classifiable.

As we have observed above, the appellants have not been able to say with certainty as under which particular heading/sub-heading they had sought to classify the two products at the time of the import.

11. Thus on the question of applicability of exemption Notification No.155/86-Cus. we do not find any material to take a final view. The adjudicating authority had also not gone into this matter in detail and the appellants have also not placed all the relevant information on record. The relevant Bill of Entries are also not clear in this regard.

12. Thus insofar as the eligibility of the silometer and power pack to the fact are concerned, we are constrained to remand the matter to the jurisdictional Commissioner, Customs for de novo adjudication after setting aside that part of the impugned order which relates to the eligibility for exemption under Notification No. 155/86-Cus. We may also mention that the certificate issued by the Joint Director of Industries is also not on record.

14. Thus insofar as the the Import Control restrictions are concerned, the appeal is allowed and insofar as the eligibility of Notification No. 155/86-Cus. is concerned, the matter is remanded to the jurisdictional Commissioner, Customs for de novo adjudication in the light of the above observations.

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