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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-16-1998

Reported in : (1999)(112)ELT466Tri(Mum.)bai

Appellant : Echjay Industries Ltd.

Respondent : Commissioner of Customs

Judgement :

1. The appellant filed a bill of entry for clearance of goods described as Model YB-9332-C, gear tooth chamfering machine complete with standard equipments. Clearance was claimed in terms of entry serial No.3 (i) 60 of Appendix-1 Part B of Import & Export Policy 1990-93. This appendix permitted import of goods to actual users under Open General Licence (OGL). The benefit of entry No. (i) 36 of Notification No.154/86-Cus., was also claimed. The Custom House on examination of the goods was of the opinion that machine imported was capable of performing the functions of deburring and tooth rounding on gears in addition to chamfering. Therefore, notice was issued proposing denial of the clearance under the OGL, the benefit of notification and confiscation of the goods and imposition of penalty for wrong declaration. The importer replied to the notice. It raised various contentions which we shall consider later in detail, as these contentions are reiterated in appeal. Essentially the contention was that the machine, it was only a chamfering machine. It was also contended that since the Import Policy permitted import of chamfering machines, deburring machines and tooth rounding machines and the notification also extended the benefit import such machines, the

machines, even if it performed more than one of the function of each of the machine would be eligible for the OGL benefit and exemption from the duty. The Addl. Collector did not accept these contentions. He stated that the Custom exemption was too available to such a combination of machine. On the same bearing he declined benefit under OGL. Hence this appeal.

2. The representative of the appellant says that the machine is rather more than a gear tooth chamfering machine. In correspondence it has been referred to both by the buyer and the supplier as to a Chamfering machine. The brochure published by its manufacturer specifically says under the heading "manufacturing programme" that the model imported YB-9332-C is gear tooth chamfering machine, model Nos. of various other machines which perform other functions such as gear deburring shaping etc. are shown as separate equipment. It is evident from this that the machine can only chamfer and cannot perform any other function. The operating instruction of the machine which is given made it clear that perform functions of chamfering. The packing list indicated that what was supplied is only a chamfer hence the machine could not perform any other function. The drawing of the machine indicated presence only of equipment for chamfering. She further says that additional equipment has to be fitted to the machine before it can perform the functions of deburring and tooth rounding.

3. The Departmental Representative contends that the manufacturers' brochure itself specifically says that the machine is designed for rounding chamfering and deburring. The brochure also indicates that different functions can be done without changing the cam. He contends that the leaflet or other literature are relied upon is not authenticated and did not clear who has authorised them. Chamfering requirement specified is obviously since the packing list itself includes the chamfering cam and supply of chamfering cam is part of the supply of complete tooth rounding machine. He reiterates the findings in the order that exemption notification has to be interpreted strictly.

He points to the leniency which was already shown to the importer that the redemption fine was 5% of the declared value and the penalty 3%.

The printed brochure put out by the manufacturer of the machine M/s.

China National Machinery and Equipment Imp. & Exp. Corp. Jiangsu Branch under the heading application and features : "The gear tooth chamfering machine Model YB9332C is designed for rounding, chamfering and deburring both external and internal teeth of gear with a medium size as well as shaft gear by means of a pencil milling cutter working on a continuous indexing method.

The machine has two kinds of the disc cams, one for gear teeth rounding and the other for gear teeth chamfering. It is necessary to set up the leverage only without change of the disc cam, while the machine is operated to cut the work piece of different module. The module dial scale of the cam for teeth chamfering is designed for a chamfering angle. 110 however, the leverage rate should be recounted and readjusted properly as the angle to be chamfered more or less than 110." When the manufacturer of machine says that it is designed for performing these specific functions, it is not unreasonable that the machine perhaps at most with some change of parts is capable of performing all the three functions. This is emphasised when the manufacturer says that the machine has two kinds of cams one for gear rounding and the other for chamfering. The same brochure indicates in the "manufacturing programme" the function of chamfering and deburring and gear shaping. When both functions are shown in the same brochure, it is difficult to conclude that the function of the machine when it was designed was only for chamfering and it was not designed to perform gear shaping and deburring. The fact that the correspondence referred to it as chamfering machine, seen in this background is not significant. The manufacturer may have called it that for convenience.

The name of the machine obviously does not encompass the functions of it.

5. It is not very clear to us what exactly is the document referred to as the manual of the machine. It is obviously not an instruction manual. It is a matter of common knowledge that such manuals contain detailed instruction for the operation of the machine. This booklet does not contain any such instruction. It is titled "Gear Tooth Chamfering Machine" and has a sub-heading 'Application and Features'.

It seems to be therefore, some kind of information leaflet. This leaflet also says in the front page that the machine is designed for rounding, deburring and

chamfering both external and internal. It says in Para 4 that there are two kinds of disc cams, one of which is used for tooth rounding and the other for the tooth chamfering. Para 5 says "The hydraulically operated tailstock for chamfering the shaft gear tooth and the gear deburring cam could be supplied with the machine as "optional assessories at extra cost" 6. The packing list indicates at Sr. No. 1 semi-automatic gear tooth chamferring machine model No. YB-9332 C. one set. This is followed by a number of items such as cams for deburring and chamferring etc. This supports the view that all these items are included in the notice. It does not indicate any of the them to be an optional accessory, separately charged nor does the invoice say so. It would be reasonable to conclude that the machine as it was supplied did contain component for chamferring and deburring.

7. The contention that in addition to the cam, other items are required for these functions to be performed is not substantiated. There is no reference to any such items in manufacturer's literature nor did the appellant produce any material in support. It would therefore follow that on the same machines different functions are to be carried out by fixing cam intended for the purpose. As we have noted the supply of different cams for performing different functions is clear from the brochure and the packing list.

8. From the drawing of the machine produced it is clear that the cam is only one of a large number of parts in the machine. The literature produced indicates that machines have been so designed as capable of undertaking all the three functions. The only requirement for performing of each functions is the change of the cam. The essential and basic identity of the machine therefore, is that of one which can perform all these three functions. In cases of such multi-function tools as the present goods it would verge on the absurd if we are to hold that merely in the absence of one part the machine is capable of performing only one function. That would go against the design of the manufacturer who intended that the machine would be capable of performing more than one functions. We have to look at the design of the manufacturer and the capability of the machine as a whole. On doing so, we have no hesitation in concluding that what was imported was a multi-function machine.

9. The I.T.C. Policy did not permit transfer of such multi-function machines under the OGL. It permitted import of specific machines according to their function. Strictly speaking, the order of the Addl.

Collector is correct. However, surely the intention of the Policy makers was not that when machines perform each function are allowed to be imported under OGL that benefit would not be available to machines completing there transfer function. In this view we can conclude that although technically the benefit of the OGL may not be available, there is no justification for confiscation or imposing penalty. There is no finding that there was any mala fide or any misdeclaration. The appellant had described the machine in the manner in which its manufacturer has described it. We are, therefore, of the view that confiscation and penalty are not justified.

10. It would however be a different matter where the notification is concerned. An exemption notification has to be construed strictly. The factors which we were cited as to the penalty and confiscation therefore would not apply with regard to the exemption notification.

The notification exempted only machines performing a specific function.

The machine imported would not fall either into entry 36 or 37 or any other entry in the notification. It is, therefore, not entitled to benefit of the notification. We, therefore, confirm the order of the Addl. Collector denying the benefit of the notification.

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