

Collector of Customs Vs. Voltas Ltd.

Collector of Customs Vs. Voltas Ltd.

SooperKanoon Citation : sooperkanoon.com/14042

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-05-1998

Reported in : (1998)(104)ELT413TriDel

Appellant : Collector of Customs

Respondent : Voltas Ltd.

Judgement :

1. Matter called. None for the respondents. However the question involved being in very short compass, we heard the Id. SDR in the absence of the respondents.

The respondents herein imported one centreless super finishing machine model - SM 400.1 and claimed the benefit of Notification No. 154/86-Cus. under S.No. 1(49). The relevant entry in the notification reads as under: "superfinishing machines capable of achieving 0.05 Ra to 0.1 Ra surface finish other than the attachment" 3. Since the machine was capable to achieve 0.03 Ra, the benefit of this notification was denied on the ground that the machine was not capable to achieve 0.05 Ra to 0.1 Ra.

4. The adjudicating authority namely the Collector of Customs, Bombay said that when the machine was achieving a better finish i.e. to the extent of 0.03 Ra, it was certainly capable of achieving the finish of the range 0.05 to 0.1 Ra. In this behalf the respondents also produced the certificate from the supplier which was not accepted by the adjudicating authority.

4.1 Regarding the grounds given in the show cause notice, the Collector observed as follows: "it will be merely counter productive when a machine is capable of achieving the higher finish, it was certainly capable of achieving the finish given in the notification." 5. The aforesaid view was not accepted by the CBEC and hence they have directed the Collector (Appeals) to file the appeal in terms of Section 129-D of the Customs Act.

6. We have heard Id. SDR Shri A.K. Agarwal. We agree with the finding of the adjudicating authority that the machine which is capable of achieving a higher finish to the extent of 0.03 Ra, it is certainly capable of achieving a finish in the range of 0.05 and 0.1 Ra.

Therefore, terms of the clause of the notification as referred to in sub-serial No. 1(49) are fully satisfied. The argument that the machine operating within the range of roughness average to the extent specified is only entitled to the benefit of notification is not correct in view of the fact that machine is capable of achieving the finish mentioned in the notification. The words 'capable to achieve' would mean that this is the minimum roughness average range of the machine. The machine imported certainly could achieve the finish to the extent specified and it could even get better finish. Therefore it is entitled to the benefit of notification as given by the original authority.

7. There would have been substance in Revenue's contention / if instead of the expression "capable of achieving", the exemption would have been available to "superfinishing machines falling within the range 0.05 Ra to 0.1 Ra surface finish...." But that is not so.

8. We do not find any substance in the Revenue's appeal. Hence we dismiss this appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com