

Gujarat Electronics Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-28-1983

Reported in : (1983)LC791DTri(Mum.)bai

Judge : H Chander, D T K.S.

Appellant : Gujarat Electronics

Respondent : Collector of Customs

Judgement :

1. This is an appeal under Section 129-A of the Customs Act, from M/s Gujarat Electronics, Ankleshwar. The learned Advocate for the appellant has submitted that the import of cabinet parts for video cassettes has been wrongly held as unauthorised and contravening the provisions of the Import Trade Control Order and therefore the Dy. Collector's order No. S/10-26/8ID dated 15.4.81 is not correct. He has submitted a sample of the goods imported and pointed out that the cassette cabinet is not made entirely of plastic and the import of the cabinet should be allowed under OGL Appendix 10, Sr. No. 1 of the A-M 81 policy. The order of the Dy. Collector holding the cabinet as a plastic extruded, moulded component falling under Sr. No. 444 of Appendix 5 was incorrect. This would be further confirmed from the fact that in the next policy for the period AM-1982, Appendix 5, Sr. No. 580(36) covers Video Cassettes without tape and parts thereof. This specific restriction under the subsequent policy could not be interpreted that the import of identical goods was restricted under the provisions of the previous year's policy. In case the appellants' request for giving the benefit of the OGL was not

acceptable, they had submitted an additional licence No. P/W/2883193 dated 29.12.79 from the export house for the clearance of the consignment and the same should be accepted and the order of fine be set aside. The third plea which has been put forward is that the goods may be given the benefit of clearance as spare parts under Para 177(6) of the policy. In reply, the Advocate has clarified that 10,000 pieces of the cabinet were imported in the consignment under consideration. He has requested that the submissions made by them be accepted and the appeal be allowed. The departmental representative has opposed the submissions. He has pointed out that initially the appellant's claimed the benefit of clearance against the licence produced by them which has been debited with the value of the consignment in question. It was only the second plea of the appellants that in case the import licence was not acceptable then they may be given the benefit of OGL under Appendix 10, Sr. No. 1. So far as the licence procured from the Export House is concerned, the clearance of goods thereunder is subject to the conditions specified in para 177 of the policy Book. He has drawn our particular attention to Sub-para (3) of para 177. He has pointed out that as per this para, goods covered under Appendix 26 cannot be allowed to be imported. Entry No. 18 in Appendix 26 covers components of engineering goods under generic entries in Appendix 5. It is pertinent to observe that entry at Sr. No.444 of Appendix 5 figures under category of engineering and allied items. The goods which are meant for electronic units are also a part of electronic engineering and therefore the import of cassettes was correctly held as unauthorised. As regards the claim of the appellant for the benefit of OGL under Appendix 10, Sr. No. 1 of the Policy, it is seen that the same restriction on merits under Sr. No. 444 under Appendix 5 comes in the way. Therefore, no benefit of the OGL is available to the appellants. The goods cannot be also treated as spares. "Spare" has been defined as per para 5(11) of the policy and this definition does not cover video cassette cabinets for treating them as spares. He has further pointed out the provisions of para 177(5) of the Policy Book which give clarification as to who could import spares. Considering these factors, he has submitted that there is no substance in the appeal and the same deserves to be rejected.

2. We have considered the submissions. We find that the departmental representative's arguments are clinching on the issues involved. The attempt of

M/s. Gujarat Electronics to clear the consignment under the licence produced or under the OGL or as spare parts has been correctly negatived. The Departmental Representative's submissions have shown that the licence produced is not valid or that the goods cannot be allowed clearance under the OGL or that they can be treated as spares and can be passed as such. In the aforesaid circumstances, we confirm the orders of the lower authorities and reject the appeal.

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