Elecon Engineering Co. Ltd. Vs. Commissioner of Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-09-1999

Reported in : (1999)(65)ECC529

Appellant : Elecon Engineering Co. Ltd.

Respondent : Commissioner of Cus.

Judgement :

1. These two appeals are against two orders of the Collector of Customs, Kandla imposing penalty of Rs. 2.00 lacs (in Appeal C/742/91) and Rs. 5.00 lacs (in Appeal C/743/91) on the appellant.

2. The facts, briefly, are that two consignments of ball bearings were imported by M/s. Silfer Enterprises (Silfer for short) at Kandla. The Customs department found that the licence tendered was not valid for import of ball bearings. It also found that the import was made during the currency of revalidated period of the licences, and such endorsements for such revalidation were forged. The reasoning in each of the orders is the same. It is that the import being unauthorised the goods are liable to confiscation under Clause (d) of Section 111 of the Act; Silfer is liable to penalty because it rendered the goods liable to confiscation by its action of filing an invalid import licence.

Elecon Engineering Co. Ltd., the appellant before us is liable to penalty because it was the principal on whose behalf Silfer was acting.

It had given a letter of authority in pursuance of which the importation was made. The Collector has applied the provisions of Sub-section (2) of Section 147 of the Act.

3. Confiscation of the goods is not questioned by the appellant before us. It is contended by its advocate that the letter of authority, on the basis of which importation was apparently made by Silfer against the licences issued to the appellant was not given by the appellant but by one of its employee acting on his own. It is contended that the importer of the goods is M/s. Silfer who would be liable to penalty.

4. The Departmental Representative adopts the reasonings in the impugned order. Emphasising the provisions of paragraph 383 of the Import Policy 1983-84 he contends that the stand taken by the appellant that the letter of authority was not issued by it is dubious having regard to the fact of signatures of Patil, its Chairman on that document, and the fact that other letters of authority had been issued by Patel for import against the licence in question, which would rebut the claim that it has been stolen from the appellant and passed on to Silfer without its knowledge.

5. It is doubtful whether it has been established, as the Collector says, that the letter of authority was signed by Patel and given to Silfer. There does not appear to have been any verification of the signature by a handwriting expert communicated to the appellant. The fact that the bank through which the documents apparently passed had not questioned his signature does not by itself establish its authenticity. The fact that the Central Bureau of investigation in some proceedings might have found the Signature to be genuine, as the Collector records, could not be used in the proceedings before him; it is clear from the material that the appellant did not have an opportunity to rebut the same. We however do not think it necessary to pursue this line of reasoning. In our view, whether or not the appellant instructed Silfer to import the goods is not of much relevance.

6. Paragraph 383 of the Import Policy confers in sub-paragraph (1) authority on a licence holder to appoint any person as an agent for arranging imports permitted by the licence. It makes it clear that the licence will continue to be in the name of

the licence holder and the obligations cast upon to him under the Import (Control Act) Order, 1955 will continue. It further explains that the function of the letter of authority holder shall be limited to placing orders making payments for import of the goods, to arranging their movement and to clear them through Customs on behalf of the licensee. It refers to Section 147 of the Customs Act, 1962. Section 147 of the Act reads thus : "147. Liability of principal and agent. - (1) Where this Act requires anything to be done by the owner, importer, or exporter of the goods, it may be done on this behalf by his agent.

(2) Any such thing done by an agent of the owner, importer or exporter of any goods shall, unless the contrary is proved, be deemed to have been done with the knowledge and consent of such owner, importer or exporter, so that in any proceedings under this Act, the owner, importer or exporter of the goods shall also be liable as if the thing had been done by himself.

(3) When any person is expressly or impliedly authorised by the owner, importer or exporter of any goods to be his agent in respect of such goods for all or any of the purposes of this Act, such person shall, without prejudice to the liability of the owner, importer, or exporter, be deemed to be the owner, importer or exporter of such goods for such purposes: Provided that where any duty is not levied or is short-levied or erroneously refunded on account of any reason other than any wilful act, negligence or default of the agent, such duty shall not be recovered from the agent unless in the opinion of the Assistant Collector of Customs the same cannot be recovered from the owner, importer or exporter." The Departmental Representative emphasises the use of the word "owner" in Sub-sections (1) and (2) of this Section.

7. Sub-section (23) of Section 2 of the Act defines "import" as bringing into India from a place outside India. Sub-section (26) of Section 2 which specifies the owner of the goods within the meaning of the term "importer" has to be understood in the context of the qualifying clause occurring therein as "in relation to any goods at any time between their importation and the time when they are cleared for home consumption". The importer of any goods is therefore the person who brings into India any goods from a place outside. It is the importer who has to file the bill of

entry and arrange for clearance of goods and payment of duty on them, their examination, if necessary and their clearance. This is precisely what sub paragraph (1) of Paragraph 383 of the Import Policy and empowers a letter of authority holder to do. The letter of authority holder who performs or is directly performed for the acts of importation is thus the importer of the goods for the purpose of the Customs Act.

8. The provisions of Section 147 of the Customs Act will apply where anything which the Act requires to be done by an importer, owner or exporter is done by any other persons at his instance. The procedures relating to clearance of the goods including production of this valid licence for clearance were required to be complied with by Silfer as the importer. They were not required to be complied with, so far as the Customs Act, 1962 is concerned by the appellant. The position might be different in terms of the Policy and the Import Control Act, 1947. As far as the Customs Act is concerned, however, the importer was Silfer.

9. The presence of the term "owner" in Section 147 of the Customs Act does not have any bearing on this aspect of the matter. It is obviously used, as is clear from the Section itself, to cater to the situations, where the act enjoins the owner of the goods imported or export goods to perform any act. Section 63, for example, enjoins the owner of the warehoused goods to pay, keeper warehouse rent and warehouse charges.

Section 64 empowers the owner to deal with such goods. Section 65 empowers the owner to carry out manufacturing process and other operations. Section 77 enjoins the owner of the baggage to make a declaration of its contents. These instances are sufficient to demonstrate that the term "owner" has been used in contradistinction of the terms "importers" and "exporters". Whether or not the appellant is the owner of the goods is irrelevant in determining whether it was the importer. It is an act of importation of the goods without a valid licence which made them liable to confiscation. This is what the Collector apparently refers to when he says that Silfer rendered the goods liable to confiscation by tendering an invalid licence. Since the act of importation took place not by the appellant, but by Silfer, the appellant therefore was not the importer, and not liable to penalty. We however, once again clarify that we must not be understood as making any pronouncement as to the rights and liabilities of the persons under the Import (Control) Order, or the import policy.