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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-13-1999

Reported in : (2000)(88)LC853Tri(Delhi)

Judge : G B Deva, N T C.N.B.

Appellant : Ester Industries Ltd.

Respondent : Cc

Judgement :

1. The appellants imported one Barometeric Condenser and two Jacketed Air Chambers and Diffusers and claimed clearance of these goods as parts of reactor. The goods were confiscated under Section 111(d) of the Customs Act, 1962 under the impugned order. The ground for confiscation is that these goods are complete machines falling under Heading 8419.89 of the Customs Tariff in terms of the HSN Notes and that licence was required for their import. A penalty of Rs. 50,000.00 has also been imposed on the appellants.

2. The appellants have contended in their appeal that the goods are parts of machine/machinery already installed and used in the factory of the appellants and these parts have been imported for replacement of defective parts. They have contended that parts are specifically exempted from import licence under Import-Export Policy 1992-97 pages 672 and 673. The appellants have submitted a diagram and write-up in support of their submission that these goods are functional parts of the plant and machinery. They have submitted that these goods

are classifiable under Heading 8419.90 as parts under the Import Policy.

During personal hearing, Shri R. Santhanam, learned Counsel submitted on behalf of the appellants that the grounds taken in the impugned order for holding that the goods are prohibited for import were that in terms of the Explanatory Notes to HSN, the goods are classifiable under Heading 8419.89 and that the appellants themselves had classified the goods so in their Bill of Entry. Shri Santhanam submitted that this view is erroneous. He explained that the Explanatory Notes to Customs Tariff are applicable only for the purpose of classification of goods to customs duty under the Customs Tariff and not for the purpose of Import Policy. In this context, he referred us to the final order No.603/98-B2, dated 27.9.1998 of the Tribunal wherein the Tribunal held that Explanatory Notes to Customs Tariff are not applicable for the purpose of classifying goods under Import Policy. Shri Santhanam also submitted that the appellants' classification of the goods for the purpose of customs duty is not relevant to the Import Policy. Shri Santhanam specifically referred to the technical write-up filed by the importer describing the goods and submitted that from the write-up and sketch it is clear that these items are parts of machinery. The write-up and sketch are reproduced below: Ejector is used to create vacuum in the Reactor with the help of steam as a motive force.

Ejector system in operation is supplied by M/s. Graham, USA and it is capable to achieve 0.1 torr vacuum for making good quality of polyester.

Diffusers are the part of the Ejector System where the steam after passing through the ejector nozzles gets compressed in order to reduce the volume of the steam and process non-condensable which are to be handled by the subsequent stages of ejector system. The position of the diffusers which have been imported from M/s. Gragam are shown in the enclosed sketch.

Barometric condenser as shown in the enclosed sketch is installed just after the second stage diffuser. Cooling water is supplied from nozzle D' and process non-condensable and compressed steam from second stage diffuser enters from nozzle 'B'. The condensed liquid along with cooling water flows down from nozzle 'E' into drain.

Non-condensable left out comes out from nozzle C and is sucked by the subsequent stages/condensers of Ejector system.

The above two Diffusers are highly worn-off in existing ejector system due to erosion resulting in deduced compression ratio leading to maximum vacuum in process reactor around 1.0 torr which is highly detrimental to polyester quality.

Because of use of these eroded diffusers, the steam consumption has also jumped from 250 Kg/hr which is directly loss of energy without contributing any benefit. These diffusers are patent items of M/s.

Graham and are made of special material.

Present condenser in operation is shell & tube type which is not effective in summer & rainy season resulting in fluctuation of vacuum in process reactor which ultimately causes the quality. M/s.

Graham have come with new generation of spray type Barometric condenser wherein non-condensable and cooling water directly comes in contact with each other. This results in higher condensing efficiency even in summer as well as in rainy season when the cooling water temperature goes upto 35C.3. Heard Shri S. Ramanathan, learned D.R. for the Revenue. He reiterated the findings in the impugned order and submitted that the appellants themselves had claimed these goods as independent machines for the purpose of customs classification. Therefore, their claim that the goods are parts has no credibility. He also submitted that the customs classification is valid in respect of Import Policy as both follow the same classification.

4 We have perused the records and have considered the submissions made by both the sides. The dispute is whether the goods in question are independent machinery or parts, for the purpose of Import Policy. The impugned order has held the goods to be machinery based on the customs classification as claimed by the appellants in the Bill of Entry and the Explanatory Notes to Customs Tariff, while the appellants claim that customs classification and Import Policy are different and one cannot be applied to the other. We find that, on this issue, in the case of LML

Limited v. Collector of Central Excise, Bombay [Final Order No. 603/98-B2, dated 29.7.1998] the Tribunal has held that interpretative rules of the Tariff and Explanatory Notes to HSN cannot be applied for the purpose of interpreting the ITC Policy. Therefore, the finding of the Commissioner on this score is not maintainable. The appellant's claim for classification under Heading 8419.89 of the Customs Tariff is also no reason for denyning the relevant Import Policy for parts to the imported goods in question. We find from the write-up and sketch that the goods are identifiable parts of plant and machinery and the Import Policy permits import of parts and machinery without licence. In the circumstances, the confiscation of the goods as prohibited goods under Section 111(d) of the Customs Act, 1962 was not justified. The appeal is accordingly allowed with consequential relief to the appellants and the impugned order is set aside.