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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-14-1999

Reported in : (2000)(116)ELT167TriDel

Appellant : Sigma Electronics

Respondent : Commissioner of Customs

Judgement :

1. These two appeals arise from the common impugned order passed by the Commissioner (Customs), Jaipur dated 22-2-1999. By the impugned order confiscation of a certain quantity of Populated Circuit Board (PCB) under Section 112(d) of the Customs Act, 1962 was ordered with option to redeem the goods on payment of fine of Rs.10,000/-. Personal penalty of Rs. 5,000/- was imposed on the importers, namely M/s. Sigma Electronics, Jaipur and an additional penalty of Rs. 5,000/- was imposed on Shri Vasudev Moolrajni, partner in the appellant firm.

2. Shri R.S. Krishna Kumar, ld. Advocate for the appellants submits that the Commissioner has given findings in favour of the appellants on almost all the points in dispute. But has still ordered confiscation of the impugned goods and imposed penalties on the appellants. He submits that the Commissioner has given the finding that PCB were in the negative list at the material time in terms of paragraph 156 of the ITC Policy and the appellants have not furnished any specific import licence at the time of importation. In this connection, he refers to sub paragraph 3 at page 3 of the impugned order wherein the Commissioner has himself observed that 1,01,000 pieces of ECBs fitted with bobbin and coil fitted

with chip, crystal included in the CKD (quartz clock movement) for which the Bill of Entry No. 000044/92, dated 21-10-1992 had been filed. The contention of the appellant is that the PCB directed to be confiscated was not an independent item covered in the negative list which covered PCBs per se but a component of another item, viz., the Quartz Clock Movement which they had imported. The PCBs which they had imported were only one of the several components of Clock Quartz Movement. Therefore, the import of PCBs in their case did not attract the negative list since PCB was merely a component and not an independent item of import to come under the negative list. The PCBs should have been imported independently to come under the negative list. ITC Policy covers only import of PCBs per se and not when it is part of the sub-assembly for making quartz clock movement or any other final product. He therefore, submits that there is no scope for holding that the imported PCBs were liable to confiscation under Section lll(d) of the Customs Act.

3. Ld. JDR Shri T.A. Arunachalam points out that the Commissioner himself has observed that the appellants had not imported PCBs separately. However, since PCBs were in the negative list at the material time and the appellants had not furnished any specific import licence at the time of importation, the goods had became liable to confiscation. He also draws attention to Public Notice No.32(PN)/92-97, dated 17-7-1992 (Annexure 'B' of the appeal papers). In the said Public Notice reference has been made to the Ministry of Commerce Notification 22(N-3), dated 30-6-1992 amending inter alia the definition of 'Consumer goods' so as to include accessories, components, parts and spares of consumer durables. PCBs already appear in the negative list. Consequent upon the amendment of the definition of 'Capital goods' ['consumer goods'] by Notification No. 22(N-3), dated 30-6-1992, accessories, components and spares of consumer durables, also fell within the scope of negative list as part of 'consumer goods'. In terms of paragraph 156 of Import and Export Policy 1992-97, consumer goods are not permitted to be imported except against a licence or in accordance with a Public Notice issued in that behalf.

Since PCBs imported by appellants clearly fell within the scope of the definition of 'consumer goods' (as per the Notification dated 30-6-1992), the Commissioner has rightly held that they are liable to confiscation and therefore, the appeals filed by the two appellants against the said order has no merit, contended the ld. JDR.4. I have considered the submissions of both the sides and have perused the records. Paragraph 156 of the Export and Import Policy 1992-97 provides that all consumer goods however described, (all industrial, agricultural, minerals or animal origin or ready to assemble sets or in unfinished form) can be permitted to be imported only against licence or in accordance with a Public Notice issued in that behalf. Public Notice No. 32, dated 17-7-1992 (referred to above), was issued clarifying the position of import of accessories, components and parts and spares of consumer durables consequent upon the issue of amending Notification No. 22 (N-3), dated 30-6-1992 to include accessories, component parts and spares of consumer durables. In Paragraph 4 of the said Public Notice, it has been stated that accessories of consumer durables may be imported by a manufacturer of the consumer goods only with a licence except those which are specifically included in the negative list of imports. Ld. Counsel had submitted that in the case of appellants, the appellants had not imported PCBs as such but as sub-assembly of quartz clock movement, and therefore, para 4 of the Public Notice No. 32, dated 17-7-1992 is not attracted and therefore, there was no contravention of the Import Policy in their case. He also submitted that further condition in paragraph 4 of the Public Notification namely the condition of actual user had been satisfied by the appellants and therefore, there was no justification for ordering confiscation of the goods nor imposition of a penalty.

5. I have carefully considered the scope of Public Notice No. 32/92.

Para 4 thereof states as under : "4. It is hereby notified that accessories, component parts and spares of consumer durables except those which are 'specifically' included in the Negative List of Imports may be imported by a manufacturer of the consumer durables without a licence." The case of the appellant is that the sub-assemblies imported by them were not items specifically included in the negative list of imports.

Since paragraph 4 excludes items specified in the negative list of the imports, the conditions relating to consumer goods after amendment of the definition of the consumer goods did not apply in their case. I am unable to accept this line of argument. After the amendment of the definition of capital goods (sic) by Ministry of Commerce by Public Notice No. 32, dated 13-6-1992, the scope of the definition of 'consumer goods' has been altered and it would include accessories, component parts and spares of consumer durables. In the instant case, no doubt PCBs have been imported as sub-assemblies/components of quartz clock movement. However, there is nothing on record to show that such sub-assemblies are not covered by the expression 'accessories, components, parts and spares' of quartz watch movement. Since paragraph 4 does not permit import of accessories/components/parts spares of consumer goods without a licence, where they are not covered specifically by items included in the Import and Export Policy, the appellants cannot take the plea that the condition of obtaining licence is dispensed with in their case in terms of Public Notice dated 17-7-1992. The fact that they are also actual users will not change the position since the "sub-assemblies" (which in my opinion would come within the meaning of accessories, components and spares of consumer durables) will require possession of a valid licence since one of those accessories, components, etc. viz. PCB is included in the negative list of imports under the Import Policy. PCBs in the instant case were imported as sub-assemblies, accessories, components etc. of consumer durables. There is no dispute that Consumer goods fall under the negative list of imports and to the extent they have been imported without obtaining the licence, making them liable to confiscation under Section lll(d) of the Customs Act, 1962. In the above view of the matter, I find no scope for interfering with the impugned order insofar as it relates to the confiscation of the said goods and the quantum of redemption fine.

6. However, as regards personal penalty of Rs. 5,000/- under Section 112 imposed on Shri Vasudev Moolrajani, taking into account the fact that a penalty of similar amount has also been imposed on the importer firm, viz., M/s. Sigma Electronics, Jaipur, I find that no separate case has been made out warranting a further penalty on Shri Vasudev Moolrajani, partner of M/s. Sigma Electronics, Jaipur. Hence I allow the appeal of Shri Vasudev Moolrajani, and set aside the penalty imposed on him.

7. Barring the above modification, the impugned order is sustained and the two appeals are disposed in the above terms.