

Opto Electronics Factory Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-19-2000

Reported in : (2000)(120)ELT588TriDel

Appellant : Opto Electronics Factory

Respondent : Collector of Customs

Judgement :

1. The issue involved in this appeal filed by General Manager, Opto Electronics Factory, is whether the grinding and polishing machine imported by them is classifiable as tools under Heading 84.60 of the first Schedule to the Customs Tariff Act and is exempted from payment of duty under Notification No. 206/76-Cus., dated 2-8-1976.

2. Shri Ashwani Kumar Sharma, learned Advocate, submitted that Sri. No.5(v) exempts "Components, Spares, Jigs, Fixtures, Tools, Dies, Moulds and Test Equipments required for the manufacture and testing of guided weapons and their accessories"; that the impugned goods meant for manufacture of guided weapons and as such exemption is available under Notification No. 206/76-Cus. He further submitted that the Asstt.

Collector rejected their claim for refund of Customs duty paid by them at the time of import, holding that tools are specifically covered in Chapter 82 of the Tariff and Heading 84.60 covers machines tools which are not mentioned in the exemption notification and term Tool used in the notification cannot be expanded to include

machine tools; that on appeal filed by them the Collector (Appeals) also under the impugned order dated 6-8-1991 rejected their appeal holding that exemption notification is to be strictly interpreted and what has been exempted are tools whereas the things imported are admittedly machine tools which are not tools by themselves. Learned Advocate contended that the goods in question are very precision grinding and polishing tools for production of optical components required in the manufacture of guided weapons) that since these tools are for production of very precision components these themselves are of very specialised nature having diamond heads for high accuracy polishing and differ considerably from the conventional or power driven tools; that due to their specialised nature and partly driven by power these are described by the foreign supplier as grinding and polishing machine; that however, from the application point of view these goods are power tools and fall in the category of tools only. He also emphasised that the Government has exempted free importation of guided weapons by exempting complete guided weapons and their accessories, items which are in the form of infrastructure for manufacture, assembly and testing of guided weapons such as Jigs, Fixtures, Tools, Dies etc. and items in the form of raw materials and special material for manufacture of guided weapons and their accessories; that the tools for use in the manufacture of guided weapons are to be treated on the same broad base as raw material and their scope should not be narrowed down to Chapter 82 only; that the word 'tool' mentioned in Notification would cover items under Chapter 84 or elsewhere as far as these are to be used for manufacture of guided weapons; that a machine tool is also a tool in a broad sense of term and as such the benefit of Notification No. 206/76 is available to them.

3. Countering the submissions, Shri M.P. Singh, learned D.R. submitted that the impugned goods are not tools to be fitted on any machine for the purpose of grinding or polishing; that the word tool has to be interpreted on the basis of other items mentioned in the notification i.e. components, spares, jigs and fixtures. The Company of these items indicates that the machine tools imported by the appellants are not covered by the [term] tool used in Sr. No. 5(v) of Notification No.206/76.

4. We have considered the submissions of both the sides. The impugned product imported by the appellants has been classified under Heading 84.60. There is no dispute about classification of the product. Heading 84.60 of the Customs Tariff reads as under :- "Machine-tools for deburring, sharpening, grinding, honing, lapping, polishing or otherwise finishing metal, sintered metal carbides or cermets by means of grinding stones, abrasives or polishing products, other than gear cutting, gear grinding or gear finishing machines of Heading No. 84.61." The Assistant Collector in the adjudication order has also clearly mentioned that the impugned goods are grinding and polishing tools and this fact has also been confirmed by the Collector (Appeals) in the impugned order. No material has been brought by the Revenue to show that 'tools' will be only covered by Chapter 82 and the machine tools which are covered by Chapter 84 will not be covered by the terms 'tools'. As the impugned goods imported by the appellants are machine tools and there is no dispute about the fact that these are used in the manufacture of guided weapons the benefit of Notification No. 206/76, dated 2-8-1976 cannot be denied. Accordingly, we allow the appeal filed by the appellants.

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