

**Precision Engineering and Vs. the Collector of Customs**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Mar-17-1983

**Reported in :** (1983)LC1270DTri(Mum.)bai

**Judge :** D T K.S., H Chander

**Appellant :** Precision Engineering and

**Respondent :** The Collector of Customs

**Judgement :**

1. This Is an appeal under Section 129-A of the Customs Act against the Order No. S/10-145/82 H. dt. 31.7.82 of the Addl. Collector of Customs, Bombay, levying fines of Rs. 50,000/- and Rs. 35,000/- on the two consignments covered by the order in lieu of the confiscation of the goods imported under the aforesaid bills of entry. The learned Advocate for the appellant has stated that the goods imported under the two bills of entry were second hand machines valued at Rs. 1,32,843.75 and second hand spares of machines and tools worth Rs. 74,104.82. Dealing with the import of second hand machines first the Advocate has submitted that the appellants imported the secondhand machines in terms of para 8 of the AM-82 Policy which permits import of second hand capital goods under O.G.L. in Appendix 2 under certain conditions. All the conditions had been satisfied in connection with the import of machines except condition (III) under para 8 which stipulates that the machines should have been manufactured more than ten years earlier. In this behalf the Advocate has submitted that the importer was an actual user and not a trader. He had set up a small industry with the help of the Govt. of

Karnataka and he was therefore not familiar with the import control regulations. Before the import of the machines, they were examined by a firm of Chartered Engineers' and the firm's certificate was submitted to the Custom authorities. This certificate does not say when the machines were manufactured and at the instance of the Customs authorities, information was obtained through Telex from the some firm of Engineers stating that the machines had been manufactured between 1970 and 1975. The machines had been examined by the Chartered Engineers abroad before their shipment to India, but the main trouble arose because the machines did not bear any label showing the date of manufacture. The telex reply from the Chartered Engineers was only in pursuance of the appellant's request to them. But that was after about 8 months of the original examination by the firm of Chartered Engineers and it impossible that they had not kept any records of examination carried out by them earlier. In addition to that the appellants' had submitted evidence from the suppliers by way of telex to show that one machine was manufactured in September, 74 while the second one was manufactured in December, 73. The telex mentions the period upto which these machines had been used by the suppliers and the storage in their warehouse thereafter. But the Addl. Collector of Customs did not accept the evidence by the suppliers as the same was not from the Chartered Engineers as per the policy. The Chartered Engineers had given the period of manufacture as between 1970 to 1975.

The Customs authorities took the year of manufacture as 1970 and hence held the import as contravening the Import Control Regulations. In case they had taken the mean of the two years as the date of manufacture there would have been no contravention as held by the Addl. Collector of Customs. On the other hand when there was any doubt the benefit of doubt should have been given to the appellanis and the year of manufacture should have been taken as 1975 on ihe basis of the certificate of the Chartered Engineers. Besides, the machines were examined by the Custom Expert Appraiser and also the Technical Experts from the trade and they could have been asked to give their opinion on the date of manufacture of the machines. The machines are second hand and they are not saleable in the Indian market. The margin of profit on these machines cannot-be more then 10%, while, the Addl. Collector had levied a high fine of about 50% approx. and in addition to

this fine the importer had to pay a heavy demurrage of Rs. 25,000/- approx. As regards, the import of second hand spares of machines and tools, the learned Advocate had submitted that the import was not permissible under the ITC Policy and the contravention of law has been admitted.

Only a request had been made for leniency.

2. Shri Gidwani for the department has challenged the submissions of the appellants. He has pointed out that even though the importer is not a trader, he was very well aware of the ITC Policy and the conditions for import of second hand machinery thereunder. Otherwise, he could not have imported the second hand machines in question. Therefore, no benefit could be given to him in this behalf. As regards the examination of the consignment by the Customs, Shri Gidwani has explained that this is mainly from the point of view of verifying the declared value of the consignment. The year of manufacture was not indicated on the machines, but since it is claimed that the supplier had the documents with him on the basis of when they had furnished the required information to the importer, the same documents should have been shown by them to the Chartered Engineers and their certificate about the date of manufacture of the machines obtained Shri Gidwani has therefore, argued that both the imports contravened the ITC regulations and the Add. Collector's order is justified. The Addl. Collector has also taken into account the fact that the importer is an actual user and a self-employed Engineer and that there was heavy demurrage on the consignments. In view of these circumstances there is no reason for modification of the Addl. Collector's order.

3. We have examined the submissions on both the sides. Taking up the question of the import of the second hand machines first we find that the Addl. Collector has not considered the evidence as satisfactory to show that the machines were manufactured within the past 10 years before their import. The Chartered Engineers have given the opinion that the machines should have been manufactured between 1970-75. This certificate is rather vague and creates an area of doubt. Possibly for this reason the adjudicating authority did not give full credence to the certificate. This certificate however is supported with the exact date of manufacture of the machines by the suppliers. These two certificates are

mutually complementary and they establish that the machines are not more than 10 years old. In view of this fact we, find that the import of the machines does not contravene the ITC regulations and we accordingly set aside the Addl. Collector's order of confiscation and levy of fine of Rs. 50,000/-. The amount of fine paid by the appellants is ordered to be refunded. As regards the second consignment of spares for machines and tools we find that the offence is accepted. The Addl. Collector has already taken a lenient view and imposed a fine of Rs. 35,000/- only. In the circumstances of the case, it is quite reasonable the same is confirmed. Thus, the appeal is partly allowed as ordered above.

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