

**Monica Electronics Ltd. Vs. Cce**

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

**Decided On :** Apr-28-2000

**Reported in :** (2000)(70)ECC250

**Judge :** J Balasundaram, A T V.K.

**Appellant :** Monica Electronics Ltd.

**Respondent :** Cce

**Judgement :**

1. In this appeal, filed by M/s. Monica Electronics Ltd. against the Order-in-Original No. 10/KK/96 dated 21.5.1996, the issue involved is whether the Import-Export Policy existing on the date of issue of licence is applicable or the Import-Export Policy existing on the date of import of goods.

2. Shri V. Lakshmikumar, Learned Advocate, mentioned that two value based advance licence dated 29.7.94 and 16.8.1994 were issued to M/s.

Onida International Ltd., by the Directorate General of Foreign Trade (DGFT) for export of 1500 Nos. of Onida 17" Black & White T.V.; that these two licences permitted import of T.V. Picture Tubes; that after fulfilment of their export obligation, DGFT granted the endorsement of transferability on these two licences on 2.12.1994 and 8.12.1994; that M/s. Onida International sold these licences to the Appellants. He further mentioned that the Appellants imported Colour Picture Tubes under Bill of Entry No. 108474 dated 3.12.1994 and claimed exemption

under Notification No. 203/92-Cus dated 19.5.92; that subsequently show cause notice dated 8.6.95 was issued for demanding customs duty amounting to Rs. 21,82,902 on the ground that exemption under Notification No. 203/92-Cus was not available as according to I.T.C.Public Notice No. 261 dated 21.12.94, issued by DGFT duty free import of Colour Picture Tube was available against the export of Colour TV Sets only; that the Commissioner of Customs confirmed the demand of duty under the impugned order, holding that the entitlement to import has to be considered with reference to what is permissible at the time of importation and it cannot be considered with reference to the entries that existed at the time of the issue of advance licence.

3. The learned Advocate submitted that the Standard Input Output Norms to the EXIM Policy, as published on 1.4.1994 mentioned at Sl. No. 220, that T.V. Picture Tubes as an item of import against the export product "Televisions--Black & White & colour of all screen sizes including projection T.V. and Video Projector in CKD & SKD thereof; that by Public Notice No. 261 dated 21.12.1994; serial No. 220 of Standard Input Output Norm was bifurcated into two serial Nos. viz Sl. Nos. 220 and 220A; that Sl. No. 220 permitted import of T.V. Picture Tube (black & white) against the export of B&W T.V. whereas S. No. 220A permitted import of colour picture tube against the export of colour TV. He, further, submitted that the validity of the licence has to be judged with reference to the provisions of the EXIM Policy as it existed on the date of issue of the licence; that once a valid licence has been issued by the licensing authority permitting import of certain items based on the Standard Input Output Norms, then the licence holder or the transferee would be entitled to import the items mentioned therein duty free; that any subsequent amendment to the Input Output Norms after the issue of licence would not affect the validity of the imports made under the said licence. The learned Counsel referred to condition No. 1 mentioned in the licence which reads as under: This licence shall be subject to the conditions in force relating to the goods covered by the licence as described in the relevant Import Trade Control Policy Book or any amendment thereof made upto and including the date of issue of the licence unless otherwise specified.

4. The learned Counsel contended that it is apparent from the said condition that the licence is only subject to the condition in the EXIM Policy upto the date of issue of the licence and it conclusively establishes that any amendment subsequent to the date of issue of the licence would not affect the validity of the imports. In support of his contention, he relied upon the following decisions-- Bharat Barrel Dums Mfg. Co. Ltd. v. Collector of Customs, Bomaby .

He also mentioned that the reliance by Commissioner on the decision in the case of Darshan Oils Pvt. Ltd. v. U.O.I. is totally misplaced as in that case the assessee had challenged the issue of Public Notice by the Govt. by invoking the principle of promissory estoppel.

5. The learned Counsel, finally, submitted that in any case, there was no revenue loss to the Department as the items other than colour picture tube, permitted to be imported duty free under the impugned licences also attracted the same rate of duty; that the Appellants would have imported the other items had the Customs objected to the clearance of colour picture tube at the time of filing of Bill of Entry; that by permitting the clearance of the consignment and issuing show cause notice on 8.6.95 they are being denied the fruits of having fulfilled the export obligation.

6. Countering the arguments, Shri Ashok Kumar, Learned DR, reiterated the findings contained in the impugned Order and emphasised that imports was effected on 30.12.1994 whereas the Public Notice amending the standard Input Output Norm had been issued on 21.12.1994 and as such the same was applicable to the imports made subsequent to the issuance of the Public Notice. He also mentioned that no transitional provision was made in the Policy which was brought into effect from 21.12.94 by providing in the Public Notice that the imports made in pursuance of the licences issued earlier would not be governed by the new policy. He also relied upon the decision in Darshan Oils case, supra, wherein the Supreme Court held that "The appellants cannot claim to avoid the logical consequences of the import being made contrary to the import policy prevailing at the time of import of the goods." He emphasised that it is evident from this judgment of the Apex Court that the Policy prevalent on the date of import regulates the import and not the Policy in force on the date the licence was issued.

Finally he submitted that there is no substance in the submission of other side that they could have imported some other items had the Customs not cleared the consignment of colour picture tube at the initial stage; that at the point of import, the proper officer as well as importer were not aware about the change in the Import Policy which had the effect of not covering the impugned goods within the definition of "materials" as given in Explanation to Notification 203/92 and as such it was a case of duty not levied.

7. We have considered the submissions of both the sides. It is not in dispute that when the licences in question were issued, T.V. Picture Tubes could have been imported as per Standard Input-Output And Value Addition Norms. The words 'T.V. Picture Tubes' were not qualified by black & white or Colour though the Export item did mention "Televisions--B.W & Colour of all screen sizes...." Thus the import of Colour T.V. picture tube was allowable at the time of issue of licences. The Apex Court, in the case of Jain Exports (P) Ltd., supra, has held that the policy prevailing during the period when import licences were issued and not when import took place, would apply. In this case import of Coconut Oil was a canalised items as per Import Policy of the year 1980-81 and the Supreme Court held that "The High Court has come to the correct conclusion that the terms of Import Policy of 1980-81 would apply to the facts of these cases." Similar views were held by the Bombay High Court in the case of Sonia Fisheries 1997 (90) ELT 22 (Bom). In this case against the export of Sea Food, Advance Licence was issued for the import of Kraft Paper in 1993. When the Appellant requested in 1994 for endorsement of transferability of the licence, he was directed to surrender the licence. In reply it was submitted that endorsement of transferability of the Advance licence was not done because the Government was considering the finalisation of the norms of the quantity of raw materials required to be imported and as per new norms of the appellant therein was not entitled to import.

The High Court held as under: It cannot be said by any stretch of imagination that the norms published on 20th January 1995 would have retrospective effect so as to permit the authorities to cancel or modify the Advance Licence granted prior to the said date, that too in cases where the appellants have fulfilled their export obligations. Paragraph 51 of the Export & Import Policy itself provides that where

norms are not fixed the quantity norms will be as specified by the competent authority and in the present case the Competent Authority after considering the Appellants application has granted Advance License in September 1993. That licence could not be modified on the basis of the norms passed on 20th January, 1995. This would be totally arbitrary action. That norms cannot have any retrospective effect so as to adversely affect the rights granted to the Appellants under Licence. The norms prescribed will take effect only from the date of its publication i.e. from 20th January, 1995 and not from the earlier date.

8. The Appellate Tribunal also took the similar view in the case of Commissioner of Customs, v. Carpet House, supra, and Garware Walls Ropes Ltd. v. Commissioner of Customs wherein it was held that "one of the conditions in the licence is that it shall be subject to the conditions in force, as described in the relevant Import Trade Control Policy Book or any amendment upto and including the date of the licence. On the date of issue of licence, the import-export norms prevailing did not mention poly-propylene of fibre grade. In the absence of anything to this effect, the view of the Commissioner--that the norms specified in the policy in force in 1995 must be applied cannot be accepted." In the present matter also the licences have been issued subject to similar condition and accordingly any subsequent amendment cannot be made applicable in absence of any clause to that effect. We also agree with the learned Counsel for the Appellants that the ratio of the judgment in Darshan Oils (P) Ltd, supra, is not applicable to the present matter. In that case general permission was given for import of raw materials, components and consumables by actual users (individual) under Import & Export Policy for the period April '83 to March '84. The Appellants entered into a contract with a foreign supplier for import of fatty acids on 1.8.1993 and 3.10.1983 and opened on irrevocable letter of credit. On 11.11.89, the Government amended the policy whereby the import of fatty acids became a canalised item and it was made clear that import of fatty acids was not allowed thereafter even under any import licence already issued "except against shipments from the country of origin already effected before the date of this public notice." The Supreme Court dismissed the appeal holding that doctrine of promissory estoppel could not be invoked to question the withdrawal of notification in the public interest and the case of the appellant therein was not covered by the

exception made in the Policy. In Darshan Oils case, the amendment in the Import Policy itself contained the clause that import of items shall not be allowed under any import licence already issued. No such clause was there in the Public Notice dated 21.12.94 which amended the Standard Input Output Norm. In view of this and following the decisions, relied upon by the Learned Counsel for the appellants, we hold that the import will be subject to the Import Policy prevailing at the time of issue of licence in the present matter. Accordingly the impugned order is set aside and the appeal is allowed.

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