

Paradeep Phosphates Ltd. Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-16-2000

Reported in : (2000)(70)ECC427

Appellant : Paradeep Phosphates Ltd.

Respondent : Collector of Customs

Judgement :

1. A contract dated 23-1-1989 executed between M/s. Paradeep Phosphates Ltd., Paradeep and M/s. Buhler Brothers Ltd., Switzerland for importing "Mobile continuous Ship Unloader Completely Assembled" was registered on 16-1-1992 at Paradeep Customs House under Project Imports Regulations, 1986. The goods were imported and assessed provisionally to duty under heading 9801.00 and cleared on 27-1-1992.
2. Subsequently, the Customs House initiated proceedings against the Importer on the grounds of short levy of duty owing to erroneous assessment under Project Import. The department felt that ship unloader was not an integral part of the project for manufacture of fertilizer and only used for speedy unloading of solid raw materials from ship.
3. The Assistant Commissioner of Customs, Paradeep in his order dated 2-12-1992 rejected the contention of the party that the unloader is a transmission equipment for transmitting raw materials and this fits into heading 9801.00. He observed that project had been registered for setting up a Phosphatic Fertilizer

Plant and a ship unloader removing raw materials from a ship and loading it onto a belt and operating from within the port area cannot be called machinery for initial setting up of a unit to manufacture fertilizer. The unloader is not at all involved in the manufacture of fertilizer, nor is it an equipment used in the construction of a fertilizer project. He accordingly finalised the provisional assessment of the imported goods by classifying them under Heading 8428.39 and confirming a duty of Rs. 10,2743,769/- on the importer.

5. We have heard Shri Joseph Vellapally, Sri. Advocate for the appellants and Shri Jagdav Singh JDR for the Revenue. The Id. Senior Advocate for the appellants submitted that the entry under Heading 98.01 has to be given widest possible meaning. The contract was registered under the Project Imports Regulations, 1986. It is stated that Material Handling (Transmission Equipment) System is integral part of the second phase of the project which provided for setting up of the Phosphoric Acid, Sulphuric Acid Plant, Captive Power Plant and Material Handling Systems. It is submitted that ship unloader is required for unloading the raw materials directly from the ships and the same being a mere transmission equipment is an integral part of the project. It is mentioned that the appellants utilise the ship unloader fully for the specific purpose of unloading Rock Phosphates and Sulphur from the ships and not in any other manner whatsoever. It is stated that the Jetty at Paradeep port is a captive one and owned by them and is part and parcel of the project and the plant premises where the ship unloader is commissioned. It is argued by the Id Sr. Advocate that the appellants have complied with all the conditions of the Registration and the contract for the import of this equipment is duly registered under Sub-clause (6) of Clause 5 of the Projects Imports Regulations, 1986. The registration of the contract in their case has not been cancelled. It is the contention of Id Sr. Advocate of the appellants that once the contract is registered and is not cancelled, the assessment of goods imported in terms of the registered contract should follow at concessional rate under Heading 98.01 as a matter of course.

He stated that ship unloader falls under the category of 'transmission equipment' or alternatively as 'auxiliary equipment' - both terms specifically mentioned under this Heading. He stated the Commissioner (Appeals) in his order dated 3-6-1993

has himself admitted this to be an auxiliary equipment in these words, "The requirement of the unloading machinery at the port of import, is indirectly connected with the main work of setting up of an industrial unit or substantial expansion of an existing industrial unit". The Ld Sr. Advocate has relied on the decision in CCE, Meerut v. Mansurpur Sugar Mills Ltd. - 1996 (87) E.L.T. 91 (Tribunal) in which relying on the judgment of the Supreme Court in Collector of Central Excise v. Rajasthan State Chemical Works reported in 1991 (55) E.L.T. 444 (S.C.), it is held that cane unloader used in Sugar factory is capital goods within the meaning of Rule 57Q of Central Excise Rules, 1944. He has further relied on the judgment of Hon'ble Supreme Court in Union of India v. Indian Charge Chrome -1999 (112) E.L.T. 753 (S.C.) in which it is affirmed inter-alia that the Project Imports Regulations, 1986 do not contain any provision for superseding or cancelling any registration of the contract allowed under superseded Regulations of 1965. It is held that the authority empowered to register the contract could not have cancelled the registration already done more so without affording the respondents an opportunity of hearing.

6. Shri Jagdav Singh Ld. JDR appearing for the Revenue submitted that in this case, demand of differential duty has been raised against the appellants under Section 28(1) of the Customs Act, 1962 for which the Assistant Commissioner of Customs is the competent authority. He stated that this is a case of change of classification with the demand of differential duty. He referred to Tariff Heading 98.01 and submitted that in order to merit classification under this heading, the imported machinery, equipment must be the part of an "Industrial Plant" as specified under this heading. He stated that in the present case the impugned equipment is a port handling machinery and not a part of the industrial plant for which the contract is registered. He refuted the claim of the appellants to term the imported item as transmission machinery. He stated that the transmission machinery is described under heading 84.83 -Transmission Shafts and crane shafts; plain shafts; bearings; gears and gearings, torque converters; fly wheels, pulleys, clutches and shaft couplings. He stated that the imported goods also do not fall under the description, 'auxiliary equipment' as it is working in the port and not in the plant.

7. We have carefully considered the submissions made before us. The first point raised by Shri Joseph Vellapally, Id Sr. Advocate on behalf of the appellants is that once a contract is registered under the Project Imports Regulations, 1986, the classification under Heading 98.01 of the imported goods should follow as a matter of course and the department has no authority to subject them to duty under any other heading of the customs tariff. If required, the customs authority will have to first de-register the contract by following due process in law.

On this contention of the appellants, it is observed that function of the customs authority acting under the Customs Act, 1962 is to decide on question of classification and valuation. In this case the goods on their imports were originally assessed to duty provisionally under heading 98.01. On further examination the customs authority formed a prima facie view that the ship unloader was in no way concerned with the manufacturer of acid/fertiliser - the purpose of the project and it did not appear to qualify for classification under sub-heading 9801.00 of customs tariff and benefit under the exemption notification thereunder. The goods appeared to be classified under sub-heading 8428.39. Consequently the appellants were issued show cause notice dated 20-5-1992 calling upon them to show cause why the goods should not be classified under this sub-heading and subject to corresponding rate of duty and why the differential duty should not be realised from them. This power is conferred on the customs authority under Section 28(1) of the Customs Act, 1962 and we see no infirmity in the procedure adopted by the department in re-classifying the goods and demanding the differential amount of duty. As per Regulation No '2 - Application' - of Project Imports Regulations, 1986 - "These regulations shall apply for assessment and clearance of the goods falling under heading No.98.01 of the First Schedule to the Customs Tariff Act, 1978".

Therefore, a person seeking to classify their goods on imports under this heading, has to follow the procedure prescribed under these regulations. These regulations do not over-ride other provisions of the Customs Act, rules and procedures. In this regards it would be fruitful to reproduce the extracts from para 16 of Larger Bench decision of the CEGAT in National Aluminium Co Ltd. v. Collector of Customs, Madras - 1997 (94) E.L.T. 409 (Tribunal) as follows :- "16. The decision in Jacsons Thevara case, 1992 (61) E.L.T. 343, in our view proceeds on the basis that the

Customs Authorities are the authorities vested with statutory authority under the Customs Act, 1962 to render decision on question of classification of imported goods vis-a-vis Tariff Act. Goods imported as project import and cleared on concessional rate of duty under Chapter Heading 84.66 of the Tariff were not used by the importer in the project and were transferred to a different legal person and hence Chapter Heading 84.66 was not attracted and concessional rate of duty and facility of project import was not available." 8. The reliance placed by the appellants on the judgment of Hon'ble Supreme Court 1999 (112) E.L.T. 753 (S.C.) is equally misplaced. In that case the contract of the importers was duty registered by the Customs Authority under the Import (Registration of Contract) Regulations, 1965. These regulations were superseded by the Project Imports Regulations, 1962. The Assistant Collector of Customs without assigning any reasons and without giving any notice, cancelled the registration of the party under the new Regulations. The Apex Court under these circumstances observed in their judgment that the new Regulations do not contain any provisions for superseding or cancelling any registration of the contract. In our opinion the new Regulations having specifically saved things done under the superseded Regulations the authority empowered to register the contract could not have cancelled the registration already done, more so without affording the respondent any opportunity of hearing. The High Court was therefore justified in setting aside the communication by the Assistant Collection of Customs cancelling the registration of contract. As we can see, the facts in the case under consideration are entirely different from the ones in the case before the Apex Court.

9. The reliance placed by the appellants on the judgement in Indian Copper Corporation Ltd. AIR 1965 SC 891, is also untenable. In this case the Supreme Court held: - "...Where a dealer is engaged both in mining operations and in the manufacturing process - the two processes being inter-dependent - it would be impossible to exclude vehicles which are used for removing from the place where the mining operations are concluded to the factory where the manufacturing process starts. It appears that the process of mining ore and manufacture with the aid of ore copper goods is an integrated process and there would be no ground for exclusion from the vehicles those which are used for removing goods to the factory after the mining operations are concluded. Nor is there any ground for

excluding locomotives and motor vehicles used in carrying finished products from the factory. The expression "goods intended for use in the manufacturing or processing of goods for sale' may ordinarily include such vehicles as are intended to be used for removal of processed goods from the factory to the place of storage...the restrictions imposed by the High Court... would not be justified." 10. This judgment was also cited before the Larger Bench of the CEGAT in National Aluminum Co. Ltd. v. Collector or Customs Madras (Supra).

The CEGAT on consideration held the view that the judgment of the Supreme Court rested entirely as an interpretation of the provisions of Section 8(3)(b) of the Central Sales Tax Act and Rule 13 of the Rules and applications of these provisions to the integral process. The provisions under heading 84.66 (now 98.01) has quite different language and content namely "Auxiliary equipment required for initial setting up of a unit or...of a specified Industrial Plant" and that the decision relied on cannot be applied to the language adopted in Chapter Heading 84.66 (present heading 98.01).

11. Now we come to question of classifying the imported equipment as 'transmission equipment' or 'auxiliary equipment' under heading 98.01 of the CTA.

This heading is extracted below

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Description of article Rate of duty.

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(5)					98.01.	9801.00	All	

items of machinery including 40% prime movers, instruments, apparatus As already stated above, as per Regulation No. 2 - "Application" of the Project Imports Regulations, 1986 - These regulations shall apply for assessment and clearance of goods falling under heading No. 98.01 of CTA. As per the Definition Clause 3 (a) of these regulations - "Industrial plants" means an industrial system designed to be employed directly in the performance of any process or series or processes necessary for manufacture, modification or extraction of a commodity, but does not include" (rest is not relevant) 12. In this case the Project or

contract is registered for the import of the machinery for the manufacture of: The imported goods are declared to be required for initial setting up of the fertilizer project. The imported article is - Mobile continuous ship unloader complete with accessories - one set. It is on record that in connection with the setting up of the fertilizer project, a captive berth for import of raw material is also to be constructed at the Paradeep Port. The continuous Ship unloader is for unloading/discharging solid raw materials viz Rock Phosphate and sulphur directly from the ship and placing them on conveyor system for Continuous transmission/conveyance to the plant silo. On taking into consideration these uncontroverted facts we are of the view that the imported machinery would appropriately be covered by the expression 'auxiliary equipment' mentioned Under Heading 98.01. Since it is for the initial setting up of a unit or for substantial expansion of an existing unit as detailed above, we are further of the view that it is for the 'specified industrial plant' as referred to in this heading and defined in Regulation 3(a) of the Project Imports Regulations, 1986.

The ship unloader is, therefore, classified under Heading 98.01. The appellants have correctly discharged the duty liability under this heading and no differential duty is liable to be realised from them.

13. In the result the appeal succeeds and the same is allowed setting aside the order of the lower appellate authority.

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