

Collector of Customs Vs. Technological Centre

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-30-1984

Reported in : (1989)(44)ELT116TriDel

Appellant : Collector of Customs

Respondent : Technological Centre

Judgement :

1. A consignment of MITUTOYA Brand Three Co-ordinate Measuring Machine was imported by M/s. Technological Consultants Centre, Faridabad.

Similarly, a Three Co-ordinate Measuring Machine 10 TA 1203, along with Control Panel TEK 31, was imported by M/s. Escorts Ltd., Faridabad.

Both the consignments were assessed to standard rate of duty without extending the benefit of Notification No. 49/78 dated 1-3-1978, on the grounds that the imported machines were not designed for all operations indicated under Serial No. 9 of Notification 49/78 dated 1-3-1978. On preferring of Appeals by both the Importers against these orders of assessment by the Assistant Collector of Customs, Bombay, the Appellate Collector of Customs, Bombay, admitted both the appeals and ordered consequential refund in both cases, extending the benefit of Customs Notification No. 49/78 dated 1-3-1978.

2. The cases have come up in appeal before us as a result of a Show Cause Notice issued to the Respondents under Section 131(3) of the Customs Act, 1962.

3. Shri K.V. Kunhikrishnan, JDR, has stated before us that the Appellate Collector's Orders in these matters are erroneous for the following reasons :- (i) As per the Accessories (Condition) Rules, 1963, accessories to be eligible for the benefit of the same rate of duty as the main equipment should satisfy two conditions, namely compulsory supply and no separate charge. In the case of M/s. Escorts the import of Electronic Calculator TEK 31 as an optional supply is evidenced by 'the Suppliers' literature. It has also been charged separately in the Suppliers' Invoice.

(ii) Serial No. 9 of Notification No. 49/78 is applicable only to Universal Measuring Equipment which can check gauges, tools, jigs and components thereof, including internal and external threads.

Both the machines in question, i.e. to say 10 TA 1203 and MITUTOYA A- 12E, have no arrangement for measuring threads and hence they would be outside the scope of the Notification.

(iii) Unlike MU 214B of Societic Genevoise' D Instruments De-Physique, Switzerland, the machines imported do not have a Geniometric Microscope to facilitate measurements of thread angle/flank angle of threads.

(iv) The imported machines, also do not come up to MU 214B in the matter of high accuracy of standard for use as reference standard to check tools, gauges, etc.

4. Shri J. Bannerjee, Advocate, appearing on behalf of Escorts, stated that the Appellate Collector had already given his conclusions on questions of fact and no interference with his findings would be warranted until these findings are found perverse or unreasonable. As regards Accessories (Condition) Rules, 1963, Shri Bannerjee pointed out that these were framed when the Customs Act, 1975 was not in existence and that we have now to be guided by the Rules for Interpretation contained in the new Tariff itself. It has also been stated that the contention that the instruments imported do not conform to a high accuracy of standard as per the opinion of the Indian Institute of Technology, Madras, is of no relevance as the Notification in question does not refer to the degree of accuracy required. The correct interpretation, it is claimed, should be based only on the plain terms of the

description of Serial No. 9 of Notification No. 49/78-Cus., dated 1-3-1978. Both Shri J. Bannerjee and Shri N.C. Sogani claimed that the two machines imported, along with the needed accessories/components, were designed to perform all the functions as per the specification in Notification 49/78. On behalf of the Technological Consultants, a certificate has been filed to affirm this on behalf of the suppliers at Tokyo. Shri Sogani also emphasised that in line with the current conception the MTTUTOYA is so designed that it can perform its functions only in combination with the designated accessories. In view of this, the accessories in this case which were imported along with the machine, must be deemed to be integral fittings of the machine and be entitled to relief under Note 2(b) of Schedule XVI of Customs Tariff Act, 1975, and also with reference to Rule 2(a) of the Rules for Interpretation.

5. We have carefully gone into all relevant documents and considered the arguments of both sides. As per Rule 2(a) of the Rules for Interpretation of the Schedule, articles assembled or disassembled (for purposes of packing or transport) are to be treated as complete or finished as a single article. What is a single article is, undoubtedly, a question of fact. The two conditions to be specified as per the Accessories (Condition) Rules, 1963, are compulsory supply and no separate charge, i.e. to say the price should also normally be included in the price of the article. We feel that the Rules of Interpretation of Tariff under the Customs Tariff Act, 1975 and the Accessories (Condition) Rules, 1963 should be considered as complementary and not contradictory and this is possible only if we keep in view not only the basic intent behind these but also the actual trade practice, as it has evolved in recent times, in the matter of both the design of machinery and equipment and their supply and invoicing. In fact, this is an aspect which has been dealt with at length in the Order of the Appellate Collector and, we find, his analysis of the relevant aspects involved as well as conclusions unexceptionable. The pertinent question here is whether the articles of import taken as a whole can be taken to be an un-assembled or dis-assembled machine. For taking a view on this question, it is necessary to take into account the specifications of the functions to be performed by the machines. If the items of import comprise the main machine and accessories which enable the machine to perform its designated functions, then, certainly, the items imported together

should be considered to be covered by Rule 2(a) of the Rules of Interpretation of the Schedule. In respect of imports made by M/s.

Escorts Ltd., the Appellate Collector has discussed in detail the functions of TEK 31 system as per the catalogue and shown that the system cannot but be viewed as an integral part of the whole unit and, therefore, ought to be classified with the instruments and not separately.

6. We also find that it is not the contention of the Department that the machines imported along with the relevant attachments do not perform all the essential functions. The dependence appears to be mainly on a technical opinion obtained from the India Institute of Technology, Madras, that the machines imported, namely 10 TA 1203 and MITUTOYA A-12E, do not have a high accuracy of standard. We cannot help agreeing with the Appellate Collector that to decide the classification what is important is to see whether the essential functions referred to in Serial No. 9 of Notification 49/78 are performed by the imported equipment, without going into the subjective criteria of high or low accuracy of such functioning, as this would necessarily depend on the Importer's requirements.

7. Coming now to the question of optional or compulsory supply and the pricing here, once again, we agree that the term 'compulsory supply' must relate to the functions intended to be performed by the machine.

If the imported parts are essential for the functions to be performed and the supply is made along with the original machine, it should be considered as a compulsory supply. Even though from the point of view of the Suppliers, the supply is made optional as he has not to decide as to what are the functions to be performed by the machine required by the purchaser. Again, on the question of price being included in the price of the article, we agree with the Appellate Collector that we cannot ignore the trade practice in view of computerisation of documents, which normally must detail part-wise break-up of the total price charged for the goods supplied. A decision on this factor cannot be taken in isolation but in the background of the facts of the case.

8. Accordingly, we uphold the decision of the Appellate Collector of Customs and dismiss the appeals.

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