

Zenith Electronics Ltd. Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-04-1985

Reported in : (1985)(5)LC1810Tri(Delhi)

Appellant : Zenith Electronics Ltd.

Respondent : Collector of Customs

Judgement :

1. This Appeal originally a revision application filed before the Central Government, arise out of rejection of Appellant's application for registration of their contract, relating to the import of one computer described as "D.S. 900/Model 8" for benefit by way of concessional rate of duty of customs under the provisions of Tariff Entry 84.66 of the Customs Tariff Act (hereinafter referred to as the (C.T.A.).

2. M/s. Zenith Electronics Ltd., Bombay (the appellants herein) claimed benefit of the registration as project import in respect of the computer imported by them, as described above, which request was declined by the Assistant Collector of Customs, Bombay, by order of 18-6-1981 on the view that goods imported being in the nature of a computer meant only to develop system commands for adoption to the commands of end product. The activity could not be construed as bringing out a new industrial product. In the Assistant Collector's view, this was merely in the nature of bringing out a working manual of any machine whereas the scope of the project as contemplated by Tariff Item 84.66 of the C.T.A. could be extended only to capital goods such as machinery, control gears etc., as figuring in sub-items (a) to (d) thereof. He, therefore, opined that the imported goods did not merit any

concessional rate of duty.

3. The Appeal to Appellate Collector of Customs also failed, who, vide his order dated 3-4-1982 confirmed Assistant Collector's view holding that the product imported was a complete computer, ready to work on installation and was neither a machinery to produce computers nor machinery to produce parts of some of the computers, to be manufactured by the Appellants. He further held that in view of the fact that the main product had not been registered under the Project Imports, the computer which was the subject matter of these proceedings, could not be a part of the auxiliary equipment. He took note of the fact that the Appellants had stated that their aim was to produce computers as far as possible with indigenously available resources and so a fully ready to instal computer could not be taken as a machinery for the manufacture of equipment. Reiterating the finding, that the project for which the computer is being imported had not been registered under 84.66 of the C.T.A. he found reference by the Appellants before him to a judgment of the Bombay High Court that the computer also fell in the category of a machine, having no bearing on the controversy inasmuch as the project for which the computer was imported had not been registered. He, thus, upheld the order passed by the Assistant Collector.

4. Aggrieved by the aforesaid rejection, the Appellants plead that they were already functioning as an existing industrial unit and manufacturing - (1) digital frequency counters; (2) digital multimeters; (3) digital clocks and watches; (4) digital panel meters and digital volt meters, for which purpose machinery was already installed. They contend that the project for manufacture of mini-computers was, thus, by way of expansion of the already existing industrial unit and that the computer had been imported by them to be used in the process of manufacture of mini-computers. They have given details of sanction/orders issued by different Government authorities/agencies certifying that they were functioning as an industrial unit, and that the project for manufacture of mini-computers had the approval of Electronics Division of the Office of the Development Commissioner (Small-Scale Industries), Ministry of Industrial Development, Import and Export Section, Government of India and that they had also necessary sanction for import of this computer (sic)DS 900 Model 8 Computer system) by way of their import

requirement of capital goods.

5. According to the Appellants, they furnished all the necessary information to the Assistant Collector in response to the queries made by him, after they had filed the application for registration of their Project Import Contract but their clarifications were not correctly appreciated by the Assistant Collector and he erroneously rejected their application although it had been urged by them that they had effected this import for substantial expansion of their existing industrial unit and that this computer was required for software without which the mini-computer and micro-processor based system made by them would be totally useless and thus the imported goods were capital goods needed for the production of the end-product of the Appellant, namely, the mini-computers. They have, therefore, questioned the finding that this computer imported by them was not required for their production operations. They have also assailed the finding that the computer was not a machinery and that if treated to be machinery, it should be only for the production of the end-product which interpretation according to them is not warranted by the wording of Tariff Item 84.66. They have relied, in support of their contention on a Judgment of the Bombay High Court in *Tata Sons Limited v. Union of India* : 1982 E.L.T. 53 (Bombay).

6. During the hearing before us, Shri R.J. Joshi, Advocate assisted by Shri H.N. Vakil, Advocate, reiterated the same contentions and explained with the help of a write-up that the imported computer was to be used for manufacture of software, which is an integral part of a computer system and consist of hundreds of thousands of instructions to the computer to make it work. It was contended with the help of this write-up that the software comprised almost 80% of the cost of manufacture of the computers, and without this, the end product, namely, the mini-computer produced by them would be unusable and that the software is normally produced by larger machines, such as the imported one, and for another intended computer, called a target computer and accordingly the appellants have to use the imported computer for making software which runs on the computer they manufacture. In addition, Shri Joshi argued that before starting production line of a model computer, one would need to make inexpensive prototypes and thoroughly test them and by this process larger machine is operated as per given design and

the imported machine was also required for testing the functioning of the mini-computers manufactured by them by feeding data with the help of the software manufactured on the imported computer and thus, making sure that the Hardware (computer manufactured by them) would work properly. He also made reference to a number of letters issued by different authorities in support of the contention that the Appellants were an existing industrial unit and also they had import licences for this computer after their requirements for capital goods had been examined and certified for the purpose of manufacture of mini-computer/micro-processor based systems and that they had been issued necessary permit to import this computer as a capital goods.

7. He also made reference to letter (Ext. C) issued by the District Industries Officer, Nasik to the effect that the import of this computer system will mean a substantial expansion of their existing manufacturing activity. He thus wound up his argument by saying that the lower authorities have erred in holding that the computer was not a machinery, and that in order to be entitled to be treated as such, it must be shown that it produced goods and that rejection of their application for registration as Project Import contract for the purpose of Tariff Item 84.66 was not at all justified.

8. Shri S.C. Rohatgi, D.R., replying on behalf of the respondents, urged that reference to the Bombay High Court Judgment, did not arise in this case inasmuch as the lower authorities have held nowhere that the computer was not a machinery; the only point being that it was not a machinery which produced any goods. He explained that the software was only a programme which helps the System Analysers to talk to the machine, and was not an integral part of the computer itself, but only assisted in the programming for which purpose he also referred to BTN Chapter 8453-1346 (Vol. III). He referred to the finding of the lower authorities that the Project Import was meant for machinery that produced goods and not for such type of aids for Data Processing and contended that in so far as imported computer did not help in making another computer, and no commodity was being produced, permission to register as an import project has been rightly declined.

9. He also placed reliance on the judgment of this Bench reported in 1984 (17) E.L.T. 443 (Tribunal) in *Photo Visual Calcutta v. Collector of Customs, Calcutta*-Order No. 174/84-B, dated 29-2-1984 that the dutiability of the article was to be decided by Customs Authorities and not by other departments and that irrespective of the letters issued by the departments of Industries or Dy. Chief Controller of Imports and Exports, the Customs Authorities were fully within their rights to take an independent decision as to the entitlement for the benefit of Project Import under Head 84 66 of C.T.I.10. Shri Joshi in his short rejoinder again contended that software was essential for the purpose of testing performance of the end-product; namely, mini-computers and was intended to be utilised to ascertain whether the programming was being done properly in the newly manufactured computers and that even the Suppliers, namely, Mazda Electronics Private Ltd., Singapore, have, vide their letter dated September 10, 1981 (Ext. H) also testified to the fact that this Computer supplied by them to the Appellants was intended for manufacturing "mini-computer/micro-processor based systems", and was necessary in developing software relating to the system of computer and also for hardware and software testing.

11. On a careful consideration of the respective positions stated before us, we find that there is abundant material on record to support the Appellant's contention that they are an already existing industrial unit which fact has been certified by the letter from the Director of Industries (Ext. B) and also that of the District Industries Officer by letter (Ext. C). It is also established that their proposal for manufacture of micro-computer/microprocessor based systems, was approved by the Department of Electronics of the Office of Director of Industries, Bombay and for that purpose their import requirements of capital goods had been examined and approval for import of this computer system accorded and necessary recommendation made to the Office of the Controller of Imports and Exports, which permission was duly granted.

12. Although the Tribunal has held earlier in the case pertaining to *Photo Visual Calcutta* (supra) that the letters or certificates by other Office will not be determinative of the issues but a reference to the Judgment makes it manifestly clear that was in the context as to whether the Photographic

Establishment/Laboratory could be considered to be an industrial plant or not. In the case before us, there is no such controversy and it is not disputed that the Appellants are an industrial unit and also satisfied the definition of an industrial plant, as highlighted in the case referred to above. In face of the admitted situations, the letters issued by the Director of Industries or the local office of the District Industries Officer that the proposal of the Appellants to commence manufacture of mini-computers/micro-processor based systems had been duly approved by the Department of Electronics and that the import requirement of capital goods in the nature of this imported computer had been assessed and endorsed, certainly have relevance to support the Appellant's contention that this import of the computer was required for substantial expansion of the existing industrial unit. Observations made by the Appellate Collector that the main contract was not registered as Project Import, seem to us to/be without any bearing on the issues involved in the case because requirement that the Appellants have to establish is only that the imported machinery is to be used either in the initial setting up of an industrial plant or for substantial expansion thereof. They do not claim it as an auxiliary equipment for registered contract but needed independently as an imported machinery for the substantial expansion of an existing industrial unit.

13. We feel satisfied that they meet all the requirements basically required for the purpose of availing of the benefit of Project Imports under Tariff Item 84.66 in case they are able to establish their plea that the software to be produced by the imported computer is required inter alia for testing of the hardware, namely, mini-computers to be manufactured by them. Since the lower authorities have not gone into this specific question of fact, we think it to be a fit case where the matter has to be remitted to the lower authorities for de novo examination, on the guidelines set out by us. We, therefore, allow the appeal and set aside the impugned order after holding that the Appellants have been able to establish that they are an existing industrial unit and that the manufacture of mini-computers/micro-processor based systems, was an expansion of the existing unit, that in case they are able to establish before the Collector of Customs (Appeals), Bombay on the basis of the manufacturer's catalogue or some other reliable evidence that the imported systems (Model: DS : 990-20) is related inter alia to testing of hardware

produced or to be produced by them, then their application for registration under Tariff Item 84.66(1) of C.T.A. and concessions thereunder in the rate of Customs Duty would be admissible and also consequential refund of duty already paid.

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