

R.R. Electronics Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-01-2000

Reported in : (2001)(73)ECC143

Appellant : R.R. Electronics

Respondent : Commissioner of Customs

Judgement :

1. The impugned order of the Collector was passed on common notice issued, among others, to each of the appellant before us. The notice, in essence alleged that, as part of a larger conspiracy imports were made of different components which on assessment would constitute video cassette recorders (VCRs for short). Different such components were imported through Bombay Port, Airport and Ahmedabad. The components were obtained abroad by disassembling such VCRs. These components were sold, as a part of the conspiracy, to persons who assembled them into VCRs and sold them to Nikhil Traders. It was alleged that the VCRs were undervalued. In his order, the Commissioner has confirmed the existence of conspiracy and various facets of it and found guilty each of the appellants before us. He has ordered recovery of duty short paid on the earlier consignment which was cleared, confiscated the video cassette recorder which was seized during the proceedings and imposed penalties on each of them.

2. Among the several arguments advanced by the advocate for the appellant and sought to be rebutted by the departmental representative, we need only consider two points, to dispose of the appeal. The first is the question of limitation. The

notice to show cause is dated 31-1-1991 and proposed recovery of duty on goods imported between 1988 and 1990, for a period beyond six months. The notice was signed by the Asstt. Collector and invoked the extended period contained in the proviso under Sub-section (1) of Section 28 of the Act. The section, as it stood in 1991 required the show cause notice to be signed by the Collector, in those cases where the extended period contained in the proviso was to be invoked. The Collector, before whom this point was raised, has given two answers. He first observes that notice could be legally issued "today" by the Asstt. Collector. When his order was passed (on 28-1-1993), the position in law had changed. The second answer is that Section 28 has been amended and as it stood on the date of this order notice for the extended period could valid be issued by the Asst. Collector. That amendment relating to a procedural law has retrospective application. It validates issue of the notice by the Collector.

4. The advocate for the appellant points out that the fact that the notice in 1993, would have been valid, is no substitute for not issuing that notice earlier. Nor does this fact confer jurisdiction on a notice which it otherwise lacks. We are concerned with the validity of notice that was issued and not that could have been issued. The second answer of the Collector is also not acceptable. The Supreme Court in *CCE, Indore v. Oil & Natural Gas Commission* - 1998 (103) E.L.T. 3 has held that notice issued under Section 11A of the Act prior to its amendment in 1992 by an officer other than a Collector of Central Excise is not valid. The same reasoning would apply to the present notice. The subsequent amendment to the law would not confer jurisdiction retrospectively so as to validate a notice which, when it was issued, was not valid. The entire demand thus is hit by limitation and would not survive. The decision of the larger bench of the Tribunal in *Anita Steel v. CCE* - 1984 (17) E.L.T. 331 has explained this with reference to case law stating that the law of limitation being procedural, operates retrospectively and that the period is the one prevailing on the date of the issue is claimed. In other words, it is the law of limitation prevailing on the date of issue of notice that would apply. We must also make a distinction between the existence of the period of limitation which may be procedural and the right to exercise that procedure. Whether a particular authority had jurisdiction to exercise a power and a question of substantial law, can certainly not be considered to be procedural. It goes to the root of the matter.

Therefore, unless the amendment to Section 28 specifically conferred retrospective jurisdiction upon the Asst. Collector to demand duty for the extended period, that amendment cannot provide the shelter that the Collector finds it to be.

5. On merits, the issue stands decided in favour of the appellant by the decision of the Tribunal in Vishal Electronics Pvt. Ltd. v. CC, Bombay -1998 (102) E.L.T. 188. The proceedings in that matter related to imports of components and sub-assemblies of close circuit television cameras in different bill of entry. Some consignments were permitted to be imported under Open General Licence and some required a specific licence. The goods imported in five bills of entry constituted components of the video camera. The question was whether this would amount to import of a complete video camera. The Tribunal after considering the decision of the Supreme Court in Giridharlal Bansidar v. U.O.I. - AIR 1964 SC 1519, U.O.I, v. Tarachand Gupta & Bros. -1983 (13) E.L.T. 1456, Slurp Business Machine v. CCE -1990 (49) E.L.T. 640 and other decisions of the Tribunal held that, since there was no restriction against the import of sub-assemblies or assemblies in completely knocked down condition as explained in the policy considered in Giridharlal Bansidar and Sharp Business Machine, each bill of entry must be considered with reference to either the licence where licence is necessary or the provisions relating to OGL.

6. The case of the appellant before us stands on a better footing. The imports were made at different times. There is no allegation, or finding, that import of components or sub-assemblies in question was prohibited. The object of permitting the import of sub-assemblies is obviously that they may be used either for repair or manufacture of goods of which they are components. One cannot conceive of a third use for them. Therefore it would be reasonable to conclude that other components of video cassette recorder which was imported would have been imported for one of these purposes. The conclusion would be inevitable that at least a part would have been imported with full knowledge of the licensing authority that these components would be used by the buyers in the manufacture of the machine. This would be all the more so in the cases where the importers would be importing these goods against specific orders raised by manufacturers. It cannot be said that in all these cases there is a conspiracy to import a video

cassette recorder contrary to law. The object of the policy in permitting import of these parts would be utilization of these parts for manufacture of VCR. It would not be correct to say that by availing of this facility the importer was doing anything contrary to whatever was permitted import. There is nothing in the policy which prevented utilization of any of the components towards manufacture of a video cassette recorder.

7. There is another aspect to the matter. This is that the Collector of Customs (Preventive) of Bombay had no jurisdiction to adjudicate upon this case to import various goods outside his territorial jurisdiction, which was imported through Ahmedabad. There is no dispute that the territorial jurisdiction of the Collector (Preventive) Bombay (as he then was) did not extend to any part of Gujarat. He therefore could not have adjudicated upon the legality or otherwise of imports made through Ahmedabad airport. Thus the notice itself issued by the officer subordinate to him in respect of imports outside the jurisdiction cannot be maintained.

8. The department representative's contention is that majority of the goods were imported through Bombay and that, because they majority of the case involved conspiracy by various persons the Commissioner had jurisdiction over that import for which he has cited provisions of Sections 4 and 178 of the Criminal Procedure Code. The provisions of that code would apply to criminal trials but would not apply to an adjudication under the Customs Act, 1962. The notification issued by the Board under Section 4 of the Customs Act, 1962 delineate the territorial jurisdiction of Commissioner and other officers of the Customs within which they have to exercise their jurisdiction. Unless therefore there was a notification at the relevant time which extended the power of the Collector (P) and its officers over Ahmedabad airport (as it did for example for over Bombay, Nhava Sheva and Sahar airport), he could not have jurisdiction to adjudicate on offences relating to imports at Ahmedabad and his officers could not have issued notice.

Accordingly, the entire case of the department found on a criminal conspiracy fails.