

Opal Industries Vs. Commissioner of C. Ex. and Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-20-2000

Reported in : (2001)(130)ELT357Tri(Mum.)bai

Appellant : Opal Industries

Respondent : Commissioner of C. Ex. and Cus.

Judgement :

1. The question for consideration in this appeal is whether the import of a consignment of quartz table clocks made by the appellant could be permitted under the provisions of Open General Licence (OGL for short), as claimed by the importer, or whether it was consumer goods, import of which was prohibited, as held by the Commissioner in the order impugned in this appeal.
2. The Commissioner, in his order, has invoked the provisions of paragraph 156 of the Import Policy as on the date of importation. This prohibited import of consumer goods, whether in completely knocked down condition/semi knocked down condition or ready to assemble sets or in finished form except against the licence or in accordance with the public notice issued in this regard.
3. The contentions of the importer in the appeal (who is absent and unrepresented despite notice) are as follows. The import was in the form of component parts, which had been assembled into clocks by means of complex operations requiring skill. The parts therefore do not conform to the definition of consumer goods contained in the Policy, that they must directly satisfy human needs without further

processing.

The public Notice No. 32(PN)/92-97, dated 17-7-1992 of the licensing authority permitted import of components and parts and consumable durables other than those specifically excluded in the negative list, subject to actual user condition. This constitutes authority for import of the goods.

4. Each of the contentions raised by the appellant could be acceptable, but for the words used in the Entry No. 1 under paragraph 156. It cannot be denied that parts of a clock cannot by themselves satisfy the human needs without further processing. It is only after these parts are assembled into a clock that the consumer product emerges.

Therefore, considered separately, each of the parts of the clock, which the appellant imported, would require further processing. Therefore, parts of the clocks require further processing before they could satisfy the human needs, and therefore do not conform to the definition of consumer goods contained in the Policy, that I have referred to above. So also, in terms of the public notice, the import of components of consumer goods by an actual user made without a licence.

5. However, the difficulty is caused by reference in the Entry No. 1 of paragraph 156 "whether in semi knocked down/completely knocked down condition or ready to assemble sets". Acceptance of each of the two grounds put forth by the appellant would in effect render this phrase nugatory, and would lead to the conclusion that import of consumer goods in completely knocked down condition form could be permitted.

This is clearly against the intention of the policy, equally clearly expressed. Therefore, in construing the term "further processing" contained in the definition of consumer goods, one must necessarily exclude assembly of the semi knocked down/completely knocked down condition components into a finished commodity. Similarly, the public notice cited by the appellant would have to be construed not to include the imports made by the actual users of the finished products in semi knocked down condition.

6. The conclusion of the Collector that import of goods was prohibited has therefore to be confirmed and they were therefore liable to confiscation. However, taking note of the fact that the expression used in the Policy is by no means clear or unambiguous (as would be evident from this order itself), and the further fact that the appellant was an actual user of the goods, I set aside the penalty imposed on the importer and reduce the redemption fine from Rs. 5.00 lakhs to Rs. 3.50 lakhs.

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