

**Master Link Vs. Commissioner of Customs (Prev)**

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**SooperKanoon Citation :** [sooperkanoon.com/21165](http://sooperkanoon.com/21165)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Feb-28-2001

**Reported in :** (2001)(137)ELT1326Tri(Mum.)bai

**Appellant :** Master Link

**Respondent :** Commissioner of Customs (Prev)

**Judgement :**

1. Appeal taken up for disposal after waiving deposit with the consent of both sides.
2. The appeal is against the order of the Commissioner confiscating under Section 111(d) of the Act from the possession of the appellant six chain making and other accessory machines permitting them to redeem on payment of fine of Rs.2 lakhs.
3. Four out of six machines in question were imported by Kantilal G.Sagar. Prakash P.Soni and Salem Chain and Ornaments Pvt. Ltd imported each of the remaining two machines. The reason advanced for confiscation of the machines by the Commissioner is that they were sold in contravention of provision of notification 159/86. There is no finding in the Commissioner's order that the import of the machine was unauthorised. The show cause notice alleged that the import of these machines were unauthorised for the reason that they could have been imported only by registered exporters. It alleged that although these importers had been registered with the Gem and Jewellery Export Promotion Council, they were not exporters and that the registration with the export promotion council had been

obtained by making a false declaration.

4. In his order, the Commissioner does not confirm this view. He agrees that the machine had been imported by the concerned parties "who are duly registered with the Gem and Jewellery Promotion council. Their registrations has been cancelled, withdrawn or were otherwise made inoperative till the date of importation of the machine." The reason that he has advanced for the confiscation is the sale of the machine in contravention of the provisions of the notification, and his view that they had not been used in the manufacture of gems and jewellery by the registered exporter.

5. If these facts are established, the machines may be liable to confiscation under clause (o) of section 111 of the Act. They were imported in terms of an exemption notification and in accordance with the condition in the import policy which had to be observed, and (if the Commissioner is right ) neither the terms of the exemption nor the condition of the policy had been complied with. However, the confiscation proposed and ordered was not under clause (O) but under clause (d) of Sec. 111. That clause will not apply in a situation where an import of the machine when it took place was legal, and it is liable to confiscation for an act or omission subsequent to the importation.

We had in our order in appeals C/699, 705, 706/2000-Bom on this issue set aside the penalty imposed on Kantilal G.Sagar with regard to the four machines imported by it.

6. For the same reason, the confiscation ordered of these six machines cannot be sustained. The appeal is allowed and the impugned order set aside.

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