

Partap Rajasthan Copper Foils and Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-28-1985

Reported in : (1985)(5)LC1532Tri(Delhi)

Appellant : Partap Rajasthan Copper Foils and

Respondent : Collector of Customs

Judgement :

1. The two questions arising for decision in this Appeal to the Tribunal are whether the rejection of the appellants' prayer for re-registration of contract to enable the appellants to avail of concessional rate of duty under, Project Import Regulations Tariff Heading 84.66(ii) of C.T.A. was correct or otherwise and whether the denial of concessions under the Item in respect of spare-parts imported, by the lower authorities is correct.

2. Facts material for decision of this Appeal are that the appellants were granted import licence bearing No. 1/CG/2039360/T/ER/78/H/80, dated 1st April, 1981 for the import of capital goods for setting up a Copper Foil Generating Plant and After Treatment Plant with accessories/spares under Project Import and the licence granted had the requisite recommendation for concessional rate of duty provided for project import under Heading 84.66 of the CTA 1975. It appears that the appellants entered into a contract with foreign supplier for import of the goods covered by the licence. It further appears that the appellants applied for registration of the contract for project import concession under Heading 84.66 of CTA 1975 and this was registered by the Bombay Custom House vide Customs

File No. S/5-40/82, dated 10-2-82.

On the strength of this registration the appellants availed of concession in respect of some consignments. In the meanwhile, Customs Notification No. 51/82 had been issued by Govt. of India. The goods being imported by the appellants were eligible to concession under the notification and the duty payable under the notification was less than that payable under Heading 84.66. The appellants then on March 30, 1982 (pp. 65-67 of the Paper Book) made an application to the Assistant Collector of Customs, 'K' Group, Project Cell, Bombay, requesting for de-registration of the entire project contract and allowing them to clear all the machineries on merit taking benefit of prevalent notifications as applicable. The application reiterated that project endorsement was a concession and could not be considered as a penalty for registering a contract for a new industry. The Assistant Collector of Customs by letter dated 12th May, 1982 addressed to the appellants accepted the appellants' request contained in letter dated 30-3-82 and de-registered the entire contract and the appellants were told that they could clear the consignment after paying the duty on merits and concession under Heading 84.66 of CTA 1975 would not thereafter be available.

3. In the meanwhile the appellants received a consignment of spares and accessories contained in 16 packages in respect of the plant. Bill of Entry No. 1560, dated 11-10-82 was filed in respect of this consignment and classification claimed at concessional rate of duty under Heading 84.66(ii) on, the ground that the goods merited project import concession. The applications dated 30-10-82 and 5-11-82 claiming re-registration of the contract and project import concession are not on record. The Assistant Collector of Customs, Bombay, by order dated 18-11-82 held that main equipments had already been imported and cleared for home consumption and goods (sought to be cleared now) are only spares. He further held that since the main equipment had already been imported, request for re-registration of the contract cannot be acceded to and he rejected the same. Collector of Customs (Appeals) Bombay, in appeal after referring to the relevant provisions held that re-registration of contract was not admissible. He further held that as per mandatory provision contained in Tariff Heading 84.66(ii) and clear stipulations therein, benefit of concessional rate of duty under the Heading could

not be accorded to the appellants in respect of consignment of spares. Aggrieved, appellants have filed this appeal to the Tribunal.

4. At the hearing of the appeal Shri S.D. Nankani, Advocate, submitted that legally there was no bar in a party availing project import concession under Heading 84.66 and also under an exemption Notification. In this connection he relied on a Tribunal decision in Collector of Customs, Madras v. Bharat Heavy Electricals Ltd., 83 ECR 1021-D. He also submitted that the appellants had got their registration for project import concession cancelled on the advice of Customs authorities. He submitted that in view of this decision of the Tribunal the advice given by the Customs authorities was wrong. The decision of the Tribunal was later in point of time. Having regard to this decision of the Tribunal the contract should be re-registered as there was no bar for such re-registration and project import concession in respect of consignment of spares should be accorded to the appellants. He also submitted that the Customs authorities had issued less-charge demands in respect of consignments cleared earlier alleging that the appellants had wrongly availed of concession under Notification Nos. 118/80-Cus., dated 19-6-80 and 51/82-Cus., dated 28-2-82. He challenged the issue of these less charge demands which are pending before the lower authorities. He submitted that the appellants had fulfilled the requirements for eligibility to concessional assessment under Heading 84.66(ii) in respect of these spares, and there being no legal bar to re-registration of the contract, the contract should be reregistered and benefit of concessional rate of duty for project import under Heading 84.66(ii) should be accorded to the appellants.

5. On behalf of the respondent Shri H.L. Verma, SDR, strongly defended the orders passed by the lower authorities.

6. At the outset it may be stated that we express no finding one way or the other as to issue of less charge demands against the appellants lest proceedings pending before the lower authorities be prejudiced in any way. For the present appeal it is also not necessary for us to give any finding whether a party can avail of simultaneously project import concession under Heading 84.66 CTA under any exemption notification because this point does not directly arise for determination

before us.

7. We may also point out that while Shri Nankani was at pains to convince us that the appellants applied for de-registration of contract on the advice of Customs authorities, there is no material on record showing that Customs authorities had given any such advice to the appellants. The appeal would have to be decided on the footing that appellants when they felt that assessment of machinery on merits was beneficial to them than assessment under Project import concession under the Heading 84.66, they applied for de-registration of the contract and cleared the goods after assessment on merits availing of concession under notifications applicable to the goods in question.

8. The Collector of Customs (Appeals), Bombay observed on the basis of statement made by appellants that they had cleared five consignments of machinery and equipments required for the Project and paid duty on merits, read with the applicable exemption notification. He also added that the main equipment for the Project had already been cleared and paid duty on merits. He referred to proviso to Heading 84.66(i) of CTA 1975 and stated that in view of this statutory provision the re-registration of the contract is not admissible.

9. We observe that the appellants with their eyes wide open and full understanding applied for de-registration of the contract when they felt that such de-registration was more beneficial to them in view of the exemption notifications applicable to the goods. Later on, they cannot be heard to say that in respect of spare-parts and accessories the contract which they had got de-registered should be re-registered.

The appellants have failed to substantiate their contention by any documentary evidence that the de-registration was due to the advice of the Customs authorities. In view of this evidence lacking, it is not necessary for us to express any finding on the question whether the Customs authorities could give any such advice and, if so, whether the appellants were bound to follow the same. We do not accept Shri Nankani's argument that merely because there is no statutory bar for such re-registration, it should be granted mechanically on mere application to that effect being made. We reject this prayer.

10. As for concession in respect of spares and accessories, for proper appreciation of the point, Heading 84.66(ii) under which the appellants claim the concession is extracted below : "All spare parts, other raw materials (including semi-finished material) or consumable stores, imported as a part of a contract or contracts, registered in terms of sub-heading (i) provided the total value of each spare parts, raw materials, and consumable stores does not exceed 10% of the value of the goods covered by sub-heading (i) and further provided that such spare parts, raw materials or consumable stores are essential for the maintenance of the plant or project mentioned in sub-heading (i)." 11. It would be seen from the foregoing that for concession under the provision, 'Registration of contract or contracts under sub-heading (i) of the Heading is condition precedent. The appellants, as already stated, had got their contract de-registered. The requirement thus of fulfilling of the pre-condition aforesaid was lacking. The lower authorities, therefore, were justified in denying the concession under the provision to the appellants.

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