

**Oracle Infotech (P) Ltd. Vs. Commissioner of C. Ex.**

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

**Decided On :** Aug-22-2002

**Reported in :** (2003)(151)ELT656TriDel

**Judge :** N T C.N.B., K Kumar

**Appellant :** Oracle Infotech (P) Ltd.

**Respondent :** Commissioner of C. Ex.

**Judgement :**

1. The appellant is a 100% EOU located in the Export Processing Zone at Noida. Its Unit has been approved for the manufacture and export of all kinds of telephone sets, radio and Walkman. In its capacity as 100% E.O.U. the appellant is authorized to obtain the capital goods, spares, raw-materials or other consumables for manufacture and export of final products. The present appeal is directed against adjudication order dated 1-11-2001 of Commissioner of Customs, Tuglakabad which confiscated two consignments imported by the appellants, under Section 111(d), (1), (m), (o) of the Customs Act, 1962. The goods had been imported in two containers and their clearance had been sought under bills of entry numbers 3243 and 3244, dated 18-12-2000. The confiscation has been ordered on the ground that the description of the goods as well as their value had been misdeclared in the import documents. With regard to misdeclaration of description the finding is that goods had been declared as parts of telephones, while, in fact, the goods under import were telephone instruments. In respect of value, the finding is that the total assessable value of the goods (based on the

value of comparable goods) is over Rs. 43 Lakhs while the declared value was only about Rs. 11 Lakhs. Upon these findings, goods have been confiscated and appellant allowed to redeem them on payment of a fine of Rs. 5 Lakhs. Further a penalty of Rs. 1 Lakh has been imposed on the appellants.

2. The submission of the appellant is that the impugned order is erroneous in law as well as on the facts of the case. It is the appellant's submission that imports of an EOU fall in the broad spectrum of economic activities like manufacture of new items, testing, labelling and such other activities incidental to manufacture, re-packing and sale of imported goods, and trading in imported goods.

The appellant pointed out that goods imported for all such operations are eligible for exemption from customs duty in terms of Notification issued from time to time. It is also their submission that in the face of such a broad scheme of exemption, it is not legally permissible for the customs authorities to proceed against the imported goods on the basis that the activities of the appellant do not amount to manufacture. The learned advocate has pointed out that this position remains accepted by the customs authorities also in the light of Circular No. 314/30/97-CX of the Central Board of Excise.

3. With regard to the specific allegation of misdeclaration of the description of the goods, the appellant has pointed out that the goods had been correctly described in the import documents. On the valuation of the goods it is the appellant's submission that the prices declared in the import invoices and the bills of entries represented transaction values. They have contented that no evidence has been produced by the customs authorities to cast any doubt on the correctness of the transaction values. Their final submission on the valuation is that as the goods were for export production and exempt from customs duty, their valuation is of no revenue implication. During the hearing of the appeal, it has also been pointed out that the goods imported under bill of entry No. 3244/00 have already been re-exported under shipping bill 1758/2000 dated 3-4-2000 and the goods imported under the other bill of entry were also due for export within 15 days. It has been further pointed out that the export value of the exported goods bore ratio of the declared import value and the department has raised no objection to their export

sale value, even though the import price has been increased several fold.<sup>4</sup> The appellant has also pointed out that it is of significance that the Commissioner has not confirmed the duty demand at the enhanced value, even though duty demand under that value had also been raised in the show-cause-notice.

5. We have carefully perused the records and have considered the submissions made by both sides. The invoices had declared the goods as under :- The Individual items/parts were also bulk packed, except for 994 complete telephones valued at less than Rs. 3 Lakhs. There is no dispute between the parties that the appellants were entitled to import components and parts, and even complete telephone sets, as the range of activities permitted in EOU covered export of imported goods after manufacture or testing or repacking or any other activity. Imports for any and all of these purposes also remain exempt under relevant customs Notification. In fact Notification No. 133/94-Cus., dated 22-6-1994 specifically mentioned goods imported for repair, reconditioning, testing calibration quality improvements, up-gradation of technology and re-engineering activities. All the goods imported in bulk packs by the appellants under the two bills of entries were required to be further processed before they could be offered in sale as telephone sets. These operations may, as well be, as insignificant as testing and re-packing them. In the present case the appellant has rightly pointed out that many processes are required to be carried out before they could be re-exported as telephone instruments. That exemption granted for manufacturing activities in an EOU extends to a broad category of activities also remains settled by Circular No. 314/30/97-CX of the CBEC. In fact, that circular very specifically directs field authorities to take a broad view of the meaning of manufacture in EOUs.

With specific regard to "galvanizing" of iron black MS pipes, the Circular has clarified that the expression 'manufacture' is not to be given the same meaning in the case of EOUs as under the Central Excise Act.

6. In the above circumstances, we are of the view that no objection could be raised to the duty free import of all the goods under the 2 bills of entries. With regard to the charge of misdeclaration of description, it is seen that this charge can apply only to the 994 telephone sets. The value (about Rs. 3 Lakhs) of these telephone

sets is not significant in the over all value of the consignment. In any event, these sets also could be imported by the EOU for testing, re-packing or trading. All the other items were actually bulk packed components of telephones like plastic top, plastic bottom, wires etc.

The description in the bill of entry filed by the appellants in respect of these goods is a true reflection of the description given in the import invoices as well as the goods themselves. Thus, a charge of mis-declaration of description is not at all justified in respect of most of the goods. With regard to the finding of mis-declaration of value, we observe that this finding has been recorded by comparing the value of the imported goods to supposedly similar goods under import.

The appellant has strongly contested the valuation on the ground that in the absence of any reason to discard the transaction value, it was not permissible at all to undertake a valuation of the goods on the basis of comparable inputs. Valuation adopted has also been faulted on the ground that comparison has not been made with the import of identical goods tallying in regard to their models, level of trade etc.

[For many reasons]. We do not consider this to be a fit case for going into the correctness of the valuation adopted in the impugned order.

The goods had been imported for re-export. What is of relevance in such a situation is value addition at the time of export. We note that goods, which were imported under bill of entry No. 3244, have already been exported and the customs authorities have raised no objection about the export value, even though the export values bore co-relation to the lower declared import value and not to the valuation carried out in the impugned order. The dispute on valuation is also of no relevance to collection of customs duties. The Commissioner has also accepted this position by dropping the duty demand proposed in the show-cause-notice. In these circumstances, we set aside the finding on misdeclaration of value.

7. In the light of the above findings, we are of the opinion that the confiscation of the goods and imposition of penalty were not justified in the facts of the present case. The impugned order is accordingly set aside and the appeal allowed with

consequential relief to the appellant.

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