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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-06-1983

Reported in : (1983)LC836DTri(Delhi)

Judge : D T K.S.

Appellant : Manisha Enterprises

Respondent : The Collector of Customs

Judgement :

1. This is an appeal of M/s. Manisha Enterprises under Section 129A(1) of the Customs Act, against the Order No. S/10-134/81.H dated 30.7.81 of the Additional Collector of Customs and No. 47 dt. 10.2.82 of the Central Board of Excise & Customs, New Delhi under which a redemption fine of Rs. 5000/- has been levied on 3 sets of hot stamping press for stamping on plastics, leather, paper, wood etc. imported by the appellants. The appellants' advocate has argued that the import of the machine was made by the importers as the actual user and they had claimed clearance of the goods under the heading at Sr. No. 12 'Printing Machinery' under Appendix 2. The entry at Sr. No. 19 under the aforesaid heading at page 55 of the policy book was specific for covering stamping machine. The importers were manufacturers of radio components, plastic moulded novelties and electrical accessories and they had the industrial licence and were registered as S.S.I. manufacturer for the aforesaid goods. This has been accepted in the Addl. Collector's order dt.

30.7.81. There was no dispute in this behalf. However, the Addl.

Collector of Customs tried to interpret this policy on the basis of the entries in the policy for the following year which amplified Heading 12 to cover printing machinery for printing on paper/paper-board/cardboard. The Addl. Collector had therefore, come to the conclusion that since the appellants were not engaged in the printing industry, the benefit of O.G.L. could not be extended to the goods under import. In other words, the Addl. Collector of Customs has held that printing machinery could be imported only by an importer registered for printing industry. The Advocate submitted that this was a wrong interpretation of the policy and the entries in Appendix 2 were responsible for the wrong interpretation. He further pointed out that the Board in para 10 of their Order dt. 10.2.82 had also observed that entry at Sr. No. 19 of Appendix 2 in A.M. 81 policy was rather ambiguous and therefore, the Board had reduced the fine on the aforesaid grounds. The Advocate stated that in similar circumstances, the Bombay High Court had decided that the benefit of ambiguity should go to the importers and the Advocate relied in this behalf on the judgment of the Bombay High Court in the case of National Machinery Manufacturers Ltd. v. Union of India and Ors. 1980 E.L.T. 717 (Bom). A copy of this judgment has also been filed with a request to take the same on record. The Advocate emphasised the fact that both the lower authorities had held that the I.T.C. policy was ambiguous and, therefore, the benefit of doubt may be given to the appellants. He also drew my attention to the order-in-appeal passed by the Appellate Collector of Customs, Bombay, in an identical case wherein he had set aside the fine and allowed the clearance of printing machinery to M/s.

Peico Electronics & Electricals Ltd., though they were not engaged in printing industry. A copy of the order dt. 30.6.81 of the Appellate Collector of Customs has been filed in support of the submission. The Advocate submitted that even though this order was of a lower authority, it furnished confirmation about the ambiguity in the I.T.C.policy. The Advocate therefore requested that the fine of Rs. 5000/- should be refunded.

2. The learned Senior Departmental Representative pointed out that the shipment of the printing machinery had taken place on 23.4.81 and therefore, the policy

applicable to the import in question was AM-82 and not AM-81 as contended by the appellant. The appellants had claimed import of the printing machinery under O.G.L. at Appendix 10 Sr. No. 3 of AM-81 Policy which permitted import of capital goods covered by Appendix 2. The import of capital goods under O.G.L. was permitted to actual users (Industrial and Non-Industrial) It was therefore, necessary that the goods should be imported by an actual user. An Actual User (Industrial) and Actual User (Non-industrial) were defined at para 5(3) and (4) of AM-82 Policy. As far as the industrial actual user is concerned, it has to be an industrial undertaking engaged in the manufacture of any goods for which it holds a registered certificate. It was an admitted fact that the registered certificate of the appellants as a small scale unit was for manufacture of radio components, plastic moulded novelities and electrical accessories.

Therefore, it was not permissible to them to import printing machinery under O.G.L. In case, however, the appellants claim import as an actual user (non-industrial unit) they had not satisfied the conditions of import in the aforesaid category as prescribed under the same definition. Hence, the goods cannot be imported under O.G.L. by the appellants either as an industrial actual user or as non-industrial actual user. The S.D.R. further observed that the letter of credit was opened on 26.2.82 which was within the Import Policy for AM-81.

Appendix 10 of this policy contained conditions for import of items under O.G.L. Para 4 of the conditions permitted application of AM-81 Policy in case there was firm commitment to import the goods before 28.2.81. Though, in this case, the letter of credit is claimed to have been opened on 26.2.81, the other requirements for application of this policy as per the aforesaid conditions had not been satisfied and therefore, the import would not be governed by AM-81 Policy as claimed by the appellants. Since the shipment had taken place on 23.4.81, AM-82 Policy was relevant for the purpose. The learned S.D.R. drew my attention to Heading 12 under Appendix 2 at page 62 of AM-82 Policy and pointed out that the machinery for printing on plastic, leather, wood, etc, would not fall within the O.G.L. He reiterated that the other submissions would be the same with regard to AM-82 Policy as those advanced by him with regard to AM-81 Policy. Since the machinery in question does not fall under Sr. No. 12 of Appendix 2, as this is not

meant for printing on paper, board, etc. the import is clearly unauthorised. As regards the appellants' submission regarding leniency, to be shown in case of ambiguity of the Import Policy, he would submit that the consignment was valued at Rs. 1,79,000/- and the Addl.

Collector had imposed a fine of Rs. 18,000/- which was about of the value. He had therefore, shown sufficient leniency in the quantum of fine considering all the facts. This fine had been further reduced to Rs. 5000/- by the Board on first appeal which was about 3% of the value. Since sufficient leniency had been shown by the adjudicating officer and the first Appellate Authority, there was no scope for further leniency, and he would urge that the appeal should be dismissed.

3. The learned Advocate stated in reply that there was no dispute about the importer not being registered as dealing in printing industry. But as per the policy, the printing machinery could be imported for printing on articles other than paper like plastic sheet, leather, etc.

and the printing machines were required for the importers' own use. The importers were manufacturers of plastic articles and novelties and the printing machinery was required for stamping on these goods. The Advocate submitted that it was not correct to say that the machinery, was not required in radio industry. As regards the applicability of the correct ITC Policy to the import under appeal, the Advocate submitted that he had a copy of the bill of entry which indicated the bill of lading date as 31.3.81 and this would imply that the shipment had been evidenced on that date, and therefore, the import would be governed by AM-81 Policy. He further reiterated his submission about the Policy being ambiguous and the benefit being extended to the goods under appeal.

4. I have examined the submission of the appellants and the respondent.

The first question to determine is the correctness of the policy which would govern the import. I have seen the relevant bill of lading dated as 31.3.81. The invoice for the goods is also dated 31.3.81 and it certifies that the goods are of West German origin and they have been shipped from Hamburg. On the other hand the learned S.D.R's contention that the goods were shipped on 23.4.81 are based merely on

notings in the department's file. The notings do not explain as to how this date namely 23.4.81 is mentioned as the date of shipment. On the other hand there is a further noting in the department's file that the goods have originated from a land-locked country and therefore, the date of crossing the border is not known. I find there is some mis-apprehension in the department's notings in this behalf. The goods are of West German origin and consigned from Hamburg. In view of these facts, I am not inclined to accept the department's finding in the notings that the date of shipment is 23.4.81. In absence of any evidence, I have to accept the bill of lading dated, namely, 31.3.81 as correct and this would determine that the import would be governed by AM-81 Policy. The appellants have claimed import under O.G.L. as an actual user (industrial). Strictly speaking, the claim is not correct as pointed out by the learned S.D.R. However, the Additional Collector and the Board have held that the policy was ambiguous. It was not clarified as in AM-82 policy that only machinery for printing on paper, paper-board and cardboard could be allowed, and that printing machinery for printing on plastic, leather, wood, etc. would not be allowed. In these circumstances, I find that the ratio of the Hon. Bombay High Court's decision cited by the appellants' Advocate would apply. Apart from this in an identical case decided by the Appellate Collector of Customs in his order No. S/49-154/81L dt. 11.8.81, he has extended the benefit of doubt to another importer who is not engaged in the printing industry.

Considering all these facts and circumstances of the case, 1 direct that the refund of fine of Rs. 5000/- be given to the appellants. They are however, warned that the same leniency may not be shown to them again in similar circumstances. In this view the appeal is allowed.

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