Usha Micro-processors Controls Vs. Collector of Customs

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SooperKanoon Citation : sooperkanoon.com/3339

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-30-1987

Reported in : (1988)(16)LC23Tri(Delhi)

Judge : H Chander, R T I.J.

Appellant : Usha Micro-processors Controls

Respondent : Collector of Customs

Judgement :

1. The appellant had filed an appeal being aggrieved from order in original No. 11-C/86 dated 16.7.1986 passed by Collector of Customs, New Delhi.

2. Briefly the facts of the case are that the appellant imported a consignment of inegrated circuits under cover of Bill of Entry No.12130 dated 7, 3,1986 valued at Rs. 5,50,639/-. The appellant had declared the goods as large scale integrated circuits and sought clearance under OGL Appendix 6, Pt. I Serial No. 565 (6) of Import and Export Policy, 1985-88. The appel lant had a so claimed benefit of Notification No. 67/85 dated 17.3.1985 and n terms of the aid notification had claimed assessment of the duty at the rate of 25%. The appellant had paid the duty of Rs. 1,37,660 under challan No. 86/10291 dated 13.3.1986 on the busts of sell-assessment of goods under Notification No. 67/85. On scrutiny of the documents, the revenue authorities discovered that certificate No. 014 dated 24.4.1985 issused by the Department of Electronics and submitted by the appellant did not tally with the office copy of the certificate as furnished by the

Deptt. of Electronics. In the office copy of the certificate of the Department of Electronics against S.No. 38 the entry was as follows: Whereas against Serial No. 38 in the copy of the certificate furnished by the appellant the entry was as follows: Since the figures in the office copy of the certificate did not tally with the original certificate issued by the Department of Electronics and furnished by the appellant, the revenue authortites were of the view that the certificate filed by the appellant was a forged one.

Similar discrepancies were noticed in respect of other serial numbers in the certificate. A total number of 145 types of ICs had been included over and above the types certified by the Department of Electronics. The quantities indicated in the original certificate were also enhanced in the certificate furnished by the appellant. In respect of S.No. 38, original certificate permitted the appellant to import only 300 pieces whereas they had imported 20,000 pieces against this serial number. The revenue authorities were of the view that the Department of Electronics certificate furnished by the appellant was a forged one and the appellant had attempted to clear 20,000 pieces against S.No. 38 which covered only ICNE 558. A show cause notice was issued to the appellants asking them to show cause notice was issued to the appellants Section 111(d), (1), (m) & (o) of the Customs Act, 1962.

They were also asked to show cause why the goods should not be confiscated under upon them under Section 112 of the Customs Act. 1962.

The appellant had sent a reply to the show cause notice vide their letter dated 14.6.1986. Relevant extracts from the said reply are reproduced below: 1. It is true that my clients have imported 256-K-DRAM UPD 41256 C-15 LSIS under B/E No. 12130 dated 7.3.1986, Airway Bill No. 1234-2050 dated 27.2.1986, IGM No. 86/1843, Fight No. AI- 315 dt 1.3.1986 and asked the clearance of the same under OGL Appendix- 6(1) List -8, Part -I.S.NO. 565 (60) of the Import & Export Policy 1985-88.

2. Para '2' of the Show Cause Notice is not true and not factual. My clients have paid duty of Rs. 4,13,017,25 vide TR-6 No. 86/10291 dated 13.3.1986 for Rs. 1,37,669,00 and TR- 6N0. dated 21.5.1986 for Rs. 2,75,357,25. This is 75% of CIF

value of Rs. 5,50,639,00 claiming concession under Notification No. 232/83 dated 18.8.1983 wherein all the ICS irrespective of LSIS or not are covered and are dutiable at the office of the Asst. Collection of Customs, Imported Air Cargo, New Delhi on 12.5.1986 wherein they had also enclosed Bank Certified Invoice as desired by Asst. Collector of Customs under Public Notice No. 27/86.

3. Para '3' of the Show Cause notice is untrue, as my clients have not submitted DOE Certificate No. 10(7)84- Comp/67/85-Cus/014 dated 24.4.1985 which is made clear vide letter mentioned above that my clients do not have any DOE Certificate claiming concessional rate of duty at the rate of 25% in this letter itself . After which a query was raised on 22.5.1986 and it was stated in the query that my clients have produced a DOE Certificate No. 14 dated 24.5.1985 which is neither true nor factual. My Clients could have not produced this certificate along with this Bill of Entry as the same was attached with Bill of Entry No. 11051 dated 28.2.1986 and B/E No. 12122 dated 7.3.1986 and was in them custody of Asst. Collector of Customs. The TR-6 Challan No. nil dated 21.5.1986 was handed over to the office of the Asst. Collector of Customs vide letter dated 22,5,1986 received by your office on 22.5.1986. Copy of the same is enclosed.

Further, my clients have replied the query of 22.5.1986 vide letter No. UMCL/IMP/86 dated 26.5.1986 received by the Asst. Collector's office on 27.5.1986, copy of the same is also enclosed, wherein my clients have very cleary stated that they have attached no DOE Certificate for claiming the benfit under Notification No. 67/85 and so also they have explained that they have not mis-declared goods as LSICS because they are really LSICS which is a sub-classification of ICS. 4. Para '4' of the show Cause Notice is untrue and not factual. This para itself shows that my clients could have never produced the above referred DOE Certificates. Not accepting, but for example if my clients concede that they could have produced the above said certificate as stated by the Assistant Collector of Customs even then they could not have claimed the benefit of this notification, where only 6850 pcs, were available for concessional rate of duty which itself proves that my clients could not have produced so called interpolated certificate for this clearance of 20000 pcs. It seems that Asst. Collector of Cus. imagination has run amuck by thinking and stating that my clients

could have produced the above referred DOE Certificate No. 14. to clear 20,000 Nos. of ICs, where he himself says that balance left in Sr. No. 38 of that interpolated certificate after using the certificate to the extent of 6150 pcs, is only 6850 pcs.

5. Para No. 5 is totally irrelevant so far as goods under import is concerned because only import made under this B/E is 1C No. UPD-41256 C-15 (256-D RAM). My clients do not know for bringing 145 types of ICS in reference to this consignment. This is also not true that my clients are liable to pay duty 100% (Basic) plus 40% (Auxiliary) because goods are covered under Notification No. 232/83 dutiable at the rate of 50% (Basic) plus 25% (Auxiliary) and the duty to this extent has already been paid vide TR 6's mentioned in Para '2'. Photo copy of DGTD Certificate under Notification No. 232/83 is already annexed with B/E and also being annexed herewith.

6. Para No. '6' is absolutely untrue and goods are not to be confiscated under Section 111(e), (m), (1) & (d) of the Customs Act, 1962 as my clients have neither mis-declared the type of goods, suppressed the facts nor produced any forged or interpolated DOE Certificate for the clearance of the consignment under reference.

There is no duty evasion and full duty applicable has already been paid without any query from department by then. Since goods are not confiscable under Section 111(e), (m), (1) & (d) of the Customs Act, 1962, my clients are not liable to pay any penalty under Section 112 of the Customs Act, 1962.

The Ld. Collector of Customs did not accept the contention of the appellant and had observed that the Bill of Entry No. 12130 was filed on 7.3.1986. On the Bill of Entry they have clearly indicated that the goods are assessable under Chapter 85.18/27 read with Notification No.67/85 dated 17.3.1985 at the rate of 25%. They have also paid duty of Rs. 1,37,660/-. Thus it was clear that they had sought for and claimed assessment under Notification No. 67/85 which stipulated a condition that the goods imported were to be covered by a certificate issued by the Department of Electronics. He did not accept the contention of the appellant that they did not produce the certificate and had rejected the plea. He had further observed that a comparison between the certificates furnished by the appellant

and the office copy issued by the Department of Electronics clearly established that the certificate furnished by the appellant was a forged one not only with reference to the quantity but also with reference to the type of integrated circuits covered by the certificate IC NEC D-41256 C-15 had been incorporated against Serial No. 38 to enable the importers to import this item. The appellant's contention that they would not have produced the certificate which has a balance of only 6850 to cover the import of 20,000 pieces was irrelevant and, therefore, could not be accepted. The Ld. Collector also did not accept the plea that the appellant had paid Rs. 4.13.017.25 against this Bill of Entry. The challan produced by the appellant evidencing the payment of Rs. 2,75,357.25 on 21.5.1986 did not contain the number assigned by the Department and any payment which is accepted by the Department will contain the serial number. The Ld.

Collector further observed that the Bill of Entry was filed on 7.3.1986 and the original duty was paid by the appellants on 13.3.1986 and the additional amount claimed to have been paid (assessing the goods at the rate of 75%) was clearly an afterthought after their premises were raided by the Customs Department on 14.3.1986. He had observed that the charge was fully established against the appellant and the goods were liable to be confiscated under Section 111(o) of the Customs Act 1962 and they were also liable to penalty under Section 112 of the Customs Act 1962. The Ld. Collector had further observed that since the goods imported were not large scale integrated circuits, the same fact could be verified by the competent assessing authority and as such he did not propose to pass any order on this issue leaving it to the competent assessing authority to come to his own conclusion after verification of the facts. the Ld. Col lector had confiscated the goods under Bill of Entry No. 12130 dt. 7.3.1986 under Section 111(o) of the Customs Act, 1962. However, he had given an option to redeem the same alter payment of a fine of Rs. 5 lakhs within 4 weeks from the issue of the order. Me had also imposed personal penalty of Rs. 5 lakhs on the appellant under Section 112 of the Customs Act, 1962. Being aggrieved from the aforesaid order the appellant has come in appeal before the Tribunal.

3. Shri K. Srinivasan, the Ld. Consultant, has appeared with Shri V.Sridharan, CA. Shri K.. Srinivasan has pleaded that the appellant did not file the certificate issued

by the Department of Electronics along with the Bill of Entry. He has further argued that the respondent has invoked Section 111(o) of the Customs Act, 1962 which is inapplicable.

Shri Srinivasan has argued that in terms of provisions of Section 111(o) only those goods are liable to confiscation which are exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this act or another law for (he time being in force in respect of which the condition is not observed unless the non-observance of (he condition was sanctioned by the proper officer.

Shri Srinivasan has pleaded that the appellant is manufacturer of computers and had imported components namely large scale integrated circuits (LSIC), He has referred to Notification No. 67/85-Cus. dated 17.3. I98j which has been reproduced in the statement of facts of the appeal memo which appears at pages 1 and 2 of the appellant paper book (as amended by Notification No. 103/86-Cus. dated 17.2.1986). He has argued that in terms of the said notification the duty was to be levied at the rate of 23%. Shri Srinivasan states that the Bill of Entry was filed on 7.3.1986 and the certificate from the Department of Electronics was not with the appellants. He stated that certificate No.014 dated 24.4.1985 issued by Department of Electronics and alleged to be forged was lying with the Department in respect of two other consignments. He has referred to internal page 2 to the reply to the show cause notice which appears on pages 30-31 of the paper book. He argued that in reply to the show cause notice it was clearly mentioned that the appellants did not submit the certificate No I(H7)84-Comp/67/85/Cus/014 dated 24.4.1985. It was made clear tide the letter written by the appellants to the respondent that the appellants do not have any Department of Electronics certificate claiming concessional rate of duty at the rate of 25%. Shri Srinivasan has referred to page 10 of the paper book filed by the Revenue and has in particular referred lo S. Nos. 1 and 2 which is certificate from the Department of Electronics which appears at page 10 of the Revenue's paper book. He has also referred to page 20 of the Revenue's paper book which is the certificate obtained by the respondent from the Department of Electronics. Shri Srinivasan has argued that in he show cause notice here is no allegation that there was interpolation in the certificate furnished by the appellant, the appellants imported 20 000 IC DRAM

whereas in the certificate issued by the Department of Electronics the number is 15,000. He has also staled that on 14.3.1986 the appellant's premises were searched. On 22.4.1986 the appellant had applied to the Department of Electronics for the issue of a fresh certificate. Shri Srinivasan has pleaded that the appellant is entitled to the benefit of Notification No. 232/83-Cus dated 18. 8.1983 which pertains to integrated circuits and in terms of the said notification the appellant is entitled to the benefit of the levy of Customs Duty at a concessionale rate of 50%. He states that the appellant had paid 25% duty at Rs. 1,37,660/- on 13.3.1986 and 50% of the duty was paid on 21.5.1986 at Rs. 2,75,357.25 and the challan as to the payment of same appears at page 25 of the paper book. Shri Srinivasan has also referred to a letter dated 8.5.1986 addressed to the Assistant Collector wherein it was mentioned that Bill of Entry No. 12130 dated 7.3.1986 was filed and the same was pending for assessment and finalisation. It was also mentioned that since the appellants are not having a certificate from the Department of Electronics to avail the duty benefit under Notification No. 67/85 and the appellants had claimed benefit of Notification No. 232/83 at the rate of 50% +25% and had made a request for allowing them to amend the Bill of Entry accordingly. Shri Srinivasan has pleaded that a query memo was issued by the revenue authorities which is reproduced below: On the copy of the invoice submitted with the B.E. goods are as IC256 K DRAM 1C No. is UPD 41256C-15 whereas these have been declared as L.S.I.C. On the copy of the B.E. and concession under Notification No. 67/85 @ 25% has been claimed by producing a D.O.E. certificate No. 014 dt. 24.4.1985.

This amounts to misdeclaration of goods (i.e.) ICs have been declared as LSIC and a forged certificate has been produced for clearances as verified from original copy of the DO.E. Certificate.

Shri Srinivasan states that it has been accepted by the Department that the goods imported are LSIC and in the show cause notice Sub-sections (d), (1), (m) and (o) of Section 111 have been mentioned and the goods have been confiscated under Section 111(o) of the Customs Act, 1962. He has also referred to the letter dated 26.5.1986 addressed by the appellants to the Assistant Collector which appears at page 27 of the paper book and states that the same was in reply to the query

issued by the Assistant Collector which was received by the appellants on 24.5.1986. In the letter the appellants have duly mentioned that the declaration in the Bill of Entry and LSIC was correct and the appellants were claiming concession under Notification No. 232/83 dutiable at the rate of 50%+25% and the duty had been paid by two challans which were already submitted to the revenue wherein ICS of all types are covered under this notification No. 232/83 i.e. LSICS, SSICS and MSICS. In the letter the appellant had duly mentioned that he had withdrawn claim of concessional rate of duly under Notification No.67/85 vide letter dated 8.5.1986 received in their office on 12.5.1986 and photo copy of the earlier letter duly attached along with that letter. It was also mentioned that the appellant did not produce any D.O.E. certificate for clearance of the subject Bill of Entry and there is also no mention of any certificate issued by the Department of Electronics. He has also referred to the show cause notice dated 27.5.1986. Shri Srinivasan has referred to certificate No. 38 issued by the Department of Electronics alleged to have been filed by the appellants which appears at page 11 of the revenue's paper book and the same reads as "ICNE 558/NEC A4I356C-15 Timer R 13000 pieces. He has also referred to the invoice which appears in revenue's paper book page 1 and in the invoice there is mention of UPD which is the brand name of Hitachi. He has argued that the change in the claim of benefit of a different notification does not justify the confiscation of goods under Section 111(o) on the ground of misdeclaration of goods, suppression of facts and production of forged and extrapolated copy of DOE's certificate. He states that in the show cause notice there is no mention of the details of the misdeclaration and there is also no mention of the facts that have been suppressed by the appellants. He has also referred to the observations made by the Ld. Collector in the order in original which appears at pages 35 to 38 of the paper book. He states that otherwise even against S.No. 38 the appellants had a balance of 6850. He states that the duty has been paid by a separate challan which at page 25 of the paper book at Rs. 27,35,357.25 on 21.5.1986. Shri Srinivasan has also referred to challan No. 86/10291 for Rs. 1,37,660/- which appears at page RA of the respondent's paper book and has also referred to another challan for Rs. 10 lakhas as voluntary payment under amnesty scheme in previous cases which appears on page 28 of the paper book. He states that there is no particular number which has been

mentioned in the challan. The only mention is just 86. He states that the assessee can pay any amount after filling in the challan and further states that there is no mention to the seized documents of the appellants in the order in original as well as show cause notice and the goods have not been assessed to duty till today and in terms of the provisions of Customs Act 1962 the Bill of Entry has to be filed under Section 46 and the assessment is to be made in terms of Section 17 of the Customs Act, 1962 and the goods are cleared for home consumption under Section 47 of the Customs Act, 1962.

He has referred to the provisions of Section 111(o) of the Customs Act, 1962 and has argued that unless the goods are assessed the question of treating goods as exempted does not arise and Section 111(o) is not applicable. Shri Sridharan, Chartered Accountant, has also argued that the claim of benefit of notification in the bill of entry does not justify the application of Section 111(o) of the Customs Act 1962. In support of his argument he has referred to a judgment of the Hon'ble Supreme Court in the case of K.P. Verghese v. ITO/Ernakulam . Shri Sridharan has further argued that Section 111(o) of the Customs Act, 1962 is only applicable in the case of postal clearance. He has argued that first there has to be an assessment and then clearance and the application of section111(o) will only arise after assessment and clearance. He states that in the present matter there is no clearance of goods and even the assessment has not been done. He has argued that learned Collector has confiscated the goods and had imposed a redemption fine of Rs. 5 lakhs and had also imposed a personal penalty of Rs. 5 lakhs. The CIF value of the goods is Rs. 5,40,000/- and the fine and the penalty imposed by the adjudicating authority is too exhorbitant. He has further argued that there is possibility of levy of duty at the rate of 25%+75% or 176% under heading 85.18/27. He has argued that the imposition of fine in lieu of confiscation and penalty are not warranted. These are very high. First the assessment has to be made and the question of imposition of fine in lieu of confiscation and penalty will only arise afterwards and the order passed by the adjudicating authority is premature. He has again referred to the provisions of Section 111(o) of the Customs Act, 1962 and has pleaded that a simple reading of the sub-section will show that the word "attempt" is not there in the section and as such no fine in lieu of confiscation or penalty can be levied. He has pleaded for the acceptance of the

appeal.

4. Shri J. Gopinath, Ld. SDR, has appeared on behalf of the respondents. Shri Gopinath has referred to the invoice No. 61-7134 dated 27.2.1986 which appears at page 1 of the respondent's paper book and states that as per invoice the description of the goods has been given as 'IC 256K DRAM/UPD 41256C-15 and the number of pieces is 20,000. He states that the DRAM stands for dynamic random access memory and the circuits are of 3 types, large, medium and extra-large and whereas in the matter before the Bench the appellants had imported large integrated circuits and if the invoice is gone through thoroughly the description in the invoice is to be interpreted in detail. 256K is the capacity to hold memory, UPD 41 is the individual manufacturer number and 256KC is the capacity and 15 relates to type. Shri Gopinath has referred to the Bill of Entry which appears at page 3 of the respondent's paper book. He states that the appellant had filed the bill of entry No. 012130 on 7.3.1986. Shri Gopinath states that a simple perusal of the bill of entry shows that in column No. 7 of the bill of entry the appellants had claimed the benefit of notification No. 67/85 dated 17.3 1985. Shri Gopinath states that the form of bill of entry has been prescribed in terms of the provisions of Clause (a) of Section 157(2) of the Customs Act 1962 and in terms of the provisions of Section 46 of the Customs Act, 1962 the importer has to give a correct declaration in the bill of entry. Shri Gopinath further states that in the Delhi Collectorate self-assessment scheme is prevalent in terms of Public Notice No. 3/84. He states that the public notice issued has been incorporated in the respondent's paper book at pages 4 to 8. He has laid special emphasis on para No. 3 of the public notice which describes that the importer/authorised agents in all cases will themselves make an assessment of the Customs Duty leviable on the goods sought to be imported. In other words, they will indicate the value in foreign exchange converted into assessable value indicated the classification under the CTA as well as CET and the duty leviable under those headings read with any relevant exemption notification, if any.

They will also indicate import licence number as well as details of O4L as the case may be and fill up all the relevant column of the bill of entry. Importers/authorised agents are required to ensure that the relevant columns for marks and number is

duly filled in the bill of entry and after it is duly completed in all respects shall be put into noting box along with necessary documents such as delivery order, invoice, packing list, catalogue, airway bill, importers declaration as to the nature of transaction and relationship with the foreign suppliers and importers code number. The bill of entry after being noted by the noting clerk, shall be returned to the importer/his authorised agents. Shri Gopinath has stated that in terms of Public Notice Customs No. 3/84, the appellants were complying with the same and had paid a sum of Rs. 1,37,600/- vide challan No. 86/10291 dated 18.3.1986 which appears at page 29 of the respondent's paper book. Shri Gopinath has again referred to para No. 6 of the Public Notice No. 3/84 which prescribes the procedure to be followed in case of discrepancy noticed at the time of assessment/examination. Shri Gopinath states that the appellants had paid the duty at Rs. 1,37,660/- under the self-assessment scheme and if at all they had the intention to pay more duty, they could have obtained a challan under the self-assessment scheme and paid the same accordingly. He has argued that the main condition in Notification No. 67/85-Cus dated 17.3.1985, which is to be satisfied by the importer, is the certificate from the Deptt. of Electronics. The appellants have not satisfied the condition of the certificate from the D.O.E. and as such the appellants could not have the benefit of the said notification and the certificate filed by the appellants was a forged one. He has referred to pages 9 to 19 of the respondent's paper book and states that this is the certificate filed by the importer and has also referred to pages 20 to 26 of the respondent's paper book, which is the office copy of the certificate obtained by the respondent from the Department of Electronics. He states that there are about 132 items in the list and the appellants have tempered with about 50 entries. He has referred to S.No. 10 of the certificate of the Department of Electronics filed by the appellants which appears at page 10 of the respondent's paper book which reads as 1C 4013 and number of pieces in mentioned as 17600 whereas the certificate obtained by the revenue authorities from the Department of Electronics the figure is 600. He states that 17 has been added there to make it 17600. He has also referred to other items the details of which are given below:

Figure as per original certificate Figure as per certificate obtained from D.O.F. filed

by the appellants_____

Shri Gopinath, Ld. SDR, has referred to the appellants' letter dated 8.5.1986 which appears at page 24 of the appellants' paper book and has stated that the writing of this letter is an afterthought. The appellants had duly mentioned in the bill of entry for the claim of benefit of Notification No. 67/85 and subsequently the appellants changed his stand to claiming of the benefit under Notification No.232/83-Cus which appears on page 2 of the appellants paper book. He has also referred to the reply to show cause notice filed by the appellants and the adjudication order. Shri Gopinath states that the argument of the Ld. Consultant that Section 111(o) of the Customs Act is not applicable is not acceptable. He has referred to ground of appeal number (B) which appears at page 11 of the paper book and states that the appellants have duly admitted that the certificate issued by the D.O.E. was attached with the bill of entry No. 11051 dated 28.2.1986.

He has referred to the original certificate alleged to have been filed by the appellants (S.No. 54 i.e. DP 8304 UA 780541 7812/93448 PC 6800 and has also referred to S.No. 54 of the copy of the certificate received from Department of Electronics which reads as DP 8304 and the numbers have been mentioned as 800 which appears on page 22 of the respondent's paper book. He has again referred to the ground of appeal No. B of the appellants and states that the Department of Electronics certificate was duly filed by the appellants and Section 111(o) of the Customs Act 1962 is fully applicable in appellants' case. Shri Gopinath has referred to the provisions of Section 25 of the Customs Act 1962 which provides that if the Central Government is satisfied that it is necessary in the public interest so to do, it may by notification in the official gazette exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of customs duty leviable thereon. Shri J.Gopinath, Ld. SDR, has referred to notification No. 67/85-Cus dated 17.3.1985 and states that the certificate from the Department of Electronics had to be filed prior to the clearance of the goods. He has argued that in interpreting the provisions of a statute, simple and plain meaning has to be given and in support of his argument, he has relied upon the following judgments : - L.V.A. Dikshitulu and

Ors. etc. where the Hon'ble Supreme Court had held that the primary principle of interpretation is that a constitutional or a statutory provision should be construed "according to the intent of they that made it. Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise and plain and thus by itself, proclaims the legislative intent in equivocal terms, the same must be given effect to, regardless of the consequences that may follow." Ors. where the Hon'ble Supreme Court had held that the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. The question of interpretation arises only when the language is ambiguous and therefore capable of two interpretations. Shri Gopinath has argued that in the matter before the Tribunal there is no ambiguity and as such there is no question of two interpretations.SC Hemraj Gordhandas v. H.H. Dave, Assistant Collector of CE & Customs, Surat and Ors. where the Hon'ble Supreme Court had held that it is well established that in a taxing statute there is no room for any intendment but regard must be had for the clear meaning of the word. If the tax payer is within the plain terms of fan exemption he can not be denied its benefit by calling in aid any supposed intention of exempting authority. In a Court of Law or equity what the legislature intended done or not to be done can only be legitimately ascertained from that which it has chosen to enact either in express words or by reasonable or necessary implication.

Shri Gopinath has referred to the provisions of Section 111(m) of the Customs Act, 1962 and in terms of the provisions of Sub-section (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof; shall be liable to confiscation. Shri Gopinath has referred to bill of entry filed by the appellant, which appears on page 3 of the paper book. He states that a simple perusal of the bill of entry shows that in the bill of entry the appellant had claimed the benefit of notification No.67/85-Cus dated 17.3.1985 and the proforma of the bill of entry has been prescribed under Section 46 of the Customs Act, 1962. He has argued that the bill of entry has to be filed in form No. I vide Regulation No. 3 of Bill of Entry Forms Regulations Act, 1976. He has argued that filing of the bill of entry is in terms of the statute. The Ld. Consultant had argued

that there is no mention of Section 111(m).

To this, Shri J. Gopinath has argued that non-mentioning of the section shall not in any way vitiate the proceedings and in support of his arguments he has referred to a judgment of the Hon'ble Supreme Court in the case of State of Karnataka v. Muniyalla where it was held that now it is well settled that merely because an order is purported to be made in a wrong provision of law, it does not become invalid so long as there is some other provision of law under which the order could be validly made. Mere recital of a wrong provision of law does not have the effect of invalidating an order which is otherwise within the power of the authority making it. He has also referred to another judgment of the Hon'ble Supreme Court in the case of N.B. Sanjana v. The Elphinstone Spinning and Weaving Mills Co. Ltd. it was held that if the exercise of a power can be traced to a legitimate source, the fact that the same was purported to have been exercised under a different power does not vitiate the exercise of the power in question. This is a well settled proposition of law. Lastly, Shri Gopinath has referred to another judgment of the Hon'ble Supreme Court in the case of P. Balakotaiah v. Union of India and Ors. where it has been held that though no exception could be taken to the proposition that when an authority passes an order which is within its competence, it cannot fail merely because it purports to be made under a wrong provision if it can be shown to be within its power under any other rule, and that the validity of an order should be judged on a consideration of its substance and not its form...Shri Gopinath has argued that though the adjudicating authority has invoked the provisions of Section 111(o) of the Customs Act, 1962 but in view of the judgment cited by him, section 111(m) can be brought in addition to Section 111(o). Shri Gopinath has referred to page 27 of the respondent's paper book, which is a letter written by the Addl.

Collector of Customs to the appellants which relates to the appellant's request for assessment of bill of entry No. 12130 dated 7.3.1986 and has argued that no classification has been done so far. Shri Gopinath has referred to pages 33 and 34 of the paper book which is a certificate dated 28.7.1986. Shri Gopinath states that this certificate was issued by the Department of Electronics, Government of India. He has argued that the adjudication order is dated 16.7.1986 whereas the

certificate is dated 28.7.1986 and the same is subsequent to the adjudication order. He has pleaded that since the certificate is after the adjudication, the appellant cannot have the benefit of notification No. 232/83 dated 18.8.1983. Shri Gopinath has pleaded for the dismissal of the appeal.

5. In reply, Shri K. Srinivasan, Ld. Consultant, has pleaded that the appellants had imported large scale integrated circuits 256K-DRAM and argues that there is no dispute on facts and the revenue authorities duly accepted the fact that the appellant had imported large scale integrated circuits. Shri Srinivasan has argued that S.No. 1 of the certificate dated 24.4.1985 issued by the Department of Electronics covers the goods imported viz 256-K-DRAM and there is no interpolation and as per this certificate the appellant was permitted to import 15,000 pieces whereas 20,000 pieces were imported. The bill of entry was filed on 7.3.1986. Shri Srinivasan has argued that claiming of benefit of a notification to which the appellant is not entitled to have the benefit and the appellant is entitled to have benefit under a different notification does not amount to misdeclaration He has referred to the order in original and has referred to internal page 5 of the adjudication order which appears on page 39 of the paper book where the Ld. adjudicating authority had observed that-"the importers have attempted to clear the consignment under the subject bill of entry under concessional rate of duty under Notification No. 67/85 against forged certificates furnished by them. I have, therefore, no hesitation in holding that this charge has been clearly established. The goods are, therefore liable for confiscation under Section 111(o) of the Customs Act, 1962." Shri Srinivasan has argued that the whole adjudication is on the basis of the forged certificate and the said alleged forged certificate was not attached with the bill of entry by the appellant. He has also referred to para No. 3 of the reply of the appellant to show cause notice which appears on page 30 of the paper book and in para No. 3 it has been mentioned that the appellant did not submit Department of Electronics certificate No.10(7)84-Comp/67/85-Cus/1014 dated 24.4.1985. The appellant had duly denied this in the reply to show cause notice. He has referred to a judgment in the case of Shriram Refrigeration Industries Ltd. v.Collector of Central Excise, Hyderabad In his impugned order, the Collector neither adverted to the aforesaid two grounds mentioned in the show cause notice nor to the appellants reply thereto. The only reasonable conclusion

from this would be that the collector was convinced by the appellants' reply and he dropped these two grounds while adjudicating upon the matter.

The learned Joint Chief Departmental Representative wants us to take these two grounds into account without telling us as to what is wrong with the appellants' explanation in regard to these two grounds. Obviously, we are unable to accede to his request.

Shri Srinivasan has stated that after considering the appellant's reply to the show cause notice, the adjudicating authority was convinced and had dropped the charges under Section 111(m) of the Customs Act, 1962 and at this stage it cannot be said that the provisions of Section 111(m) of the Customs Act were invoked. Shri Srinivasan has referred to self-assessment scheme which is being followed in the Delhi Collectorate and referred to by the Ld. SDR. He has argued that self-assessment scheme has got no statutory force and if at all there is any contravention of the same, it cannot lead to the confiscation of the goods. He has stated that the fresh certificate of Department of Electronics is well in order and the benefit of Notification No. 67/85 dated 17.3.1985 as claimed by the appellant should be allowed. He has argued that the Department of Electronics' certificate procured by the appellant contains a certificate at page 9 whereas the alleged certificate of Department of Electronics filed by the Department starting from page 20 are annexures to the certificate and the Department has not filed the copy of the certificate like page 9 of the respondent's paper book. Shri Srinivasan has argued that in the bill of entry there is no mention by the appellant as to the serial number of the certificate of the Department of Electronics and the appellant did not attach the Department of the Electronics certificate with the bill of entry and on 7.3.1986 the appellant had no certificate issued by the Department of Electronics. Shri Srinivasan fairly agrees with the contention of the Ld. SDR that Section 111(o) of the Customs Act should be read with Section 25 of the Customs Act, 1962 which states that if any condition is to be fulfilled for the benefit of notification, the condition has to be fulfilled before the clearance. He argues that till today there is no clearance of goods and the certificate dated 28.7.1986 which appears on page 33 of the paper book was procured by the appellant before the clearance of the goods and as such the appellant is entitled to the benefit of

notification No. 67/85 dated 17.3.1985. Shri Srinivasan has pleaded for the acceptance of the appeal; and alternatively, he has pleaded for the reduction of the fine in lieu of confiscation and penalty.

6. We have heard both the sides and have gone through the facts and circumstances of the case. The facts are not disputed by both the sides. It is also not disputed that the goods have not been cleared for home consumption so far. The appellant had imported 20,000 pieces of large scale integrated circuits. In the bill of entry the description of the goods has been given as 20,000 pieces LSIC and in column No. 7 the appellant had claimed its assessment under heading 85. 18/27 of CTA 1975 and had also claimed benefit of notification No. 67/85 dated 17.3.1985 and on the bill of entry they had mentioned that the invoice is attached. In the invoice the description of the goods has been given as IC 256K DRAM UPD 41256C-15. Shri Gopinath, during the course of arguments, had argued that DRAM stands for dynamic random excess memory and IC stands for integrated circuits and 256K is the capacity to hold memory and UPD 41 is the individual manufacturer's number, 256C is the capacity and 15 relates to time. Thus the description of the goods given in the bill of entry is accepted by both the sides and there is no dispute to the same. The Ld. Collector of Customs has confiscated the goods in terms of the provisions of Section 111(o) of the Customs Act, 1962 but has given an option to redeem the same after payment of fine of Rs. 5 lakhs and also has imposed a penalty of Rs. 5 lakhs under Section 112 of the Customs Act, 1962. The appellants all along have agitated that they did not attach the certificate dated 24.4.1985 issued by the Department of Electronics. We have perused the bill of entry and on the bill of entry the appellants have mentioned "As per invoice attached" and the appellants had also claimed in column No. 7 of bill of entry the benefit of notification No. 67/85 dated 17.3.1986.

The self assessment system vide Public Notice Customs No. 3/84 was prevalent in Delhi Collectorate and in accordance with procedure laid down in the public notice the appellants had paid the customs duty vide challan No. 86/10291 dated 13.3.1986. Thereafter the appellants had voluntarily paid customs duty to the tune of Rs. 2,75,357.27 on 21.5.1986 in terms of notification No. 232-Cus. dated 18.8.1983. In every Customs House by precedents a procedure is set for the

clearance of the imported goods and also the mode of payment of duty but nevertheless it also cannot be denied that the procedure cannot go over and above the statutory provisions under the Customs Act, 1962. It is also a settled practice that in the bill of entry the importer claims assessment under a particular heading and also claims the benefit of a particular notification issued under Section 25 of the Customs Act, 1962 but the revenue authorities invariably change the classification under Customs Tariff Act, 1975 and also sometimes deny the benefit of a notification on the ground that the importer does not satisfy the conditions laid down in the notification. The revenue has solely based its case on the alleged forged certificate issued by the Department of Electronics. In para No. 4 and 5 of the show cause notice the Assistant Collector has mentioned that "the importers have forged their own copy of the certificate to claim concessional rate of duty under notification No. 67/85. Out of a forged quantity of 13000 pcs. at S.No.38 in the importers copy, 6150 pcs. have already been cleared. Since the quantity approved at S.No. 38 for NE 558 is only for 300 pcs., the importers have already made excess clearance for such goods. Similar discrepancies have been noticed in respect of other ICs at various S.Nos. in the certificate. A total number of 145 type of ICs have been included extra and the quantity enhanced at various S.Nos. comes to 8,85,700 pcs. Thus it is clear that the goods imported vide Bill of Entry No. 12130 dated 7.3.1986, namely UPD-41256 C-15 does not qualify for duty concession under notification No. 67/85 dated 17.3.1985 The importers are therefore liable to pay customs duty at the standard rate of duty 100% (Basic) plus 40% (Aux.)". In reply to the said show cause notice the appellants had replied as below: Para '4' of the show cause notice is untrue and not factual. This para itself shows that my clients could have never produced the above referred DOE certificates. Not accepting, but for example, if my clients concede that they could have produced the above said certificate as stated by the Assistant Collector of Customs even then they could not have claimed the benefit of this notification, where only 6850 pcs. were available for concessional rate of duty which itself proves that my clients could not have produced so called interpolated certificate for the clearance of 20,000 pcs. It seems that Asstt. Collector of Customs imagination has run amuck by thinking and stating that my clients could have produced the above referred DOE certificate No. 14 to clear 20,000 Nos. of ICS,

where he himself says that balance left in Sr.No. 38 of that interpolated certificate after using the certificate to the extent of 6150 pcs.

is only 6850 pcs.

Para No. 5 is totally irrelevant so far as goods under import are concerned because only import made under this Bill of Entry is IC No. UPD-41256 C-15 (256-D RAM). My clients do not know for bringing 145 types of ICS in reference to this consignment. This is also not true that my clients are liable to pay duty 100% (Basic) plus 40% (Auxiliary) because goods are covered under Notification No, 232/83 dutiable at the rate of 50% (basic) plus 25% (Auxiliary) and the duty to this extent has already been paid vide TR-6s mentioned in para '2'. Photo copy of DGTD Certificate under Notification No. 232/83 is already annexed with B/E and also being annexed herewith.

7. A simple perusal of the bill of entry, invoices and the licences issued by the Department of Electronics which appear on pages 10 and 20 of the respondent's paper book shows that there is no interpolation at S.No. 1 in the copy of the annexures to the certificate issued by the Department of Electronics and filed by the appellants with the other bills of entry. Even for the sake of argument, if it is accepted that the certificate is a forged one, it is to be proved by the revenue authorities. It is a settled law that the technicalities of Evidence Act may not be followed but the essential principles of natural justice have got to be observed and the burden is always on the department to show that the goods were brought into India with the necessary permit and it was so held by the Hon'ble Supreme Court in the case of Amba Lal v. Union of India reported in AIR 1961 SC 264. In the matter before us there is no evidence on record which proves that the certificate on record which appears on pages 9 to 19 of the respondent's paper book is a forged one. Pages 20 to 26 are the annexures to the certificates issued by the Department of Electronics. In terms of the provisions of Section 73 of the Indian Evidence Act, 1872, there is to be a comparison of signature, writing or seals with others admitted or proved. Section 73 of the Evidence Act, 1872 is reproduced below: 73. In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or

seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.State of Delhi v. Pali Ram had held that: 32. Since even where proof of handwriting which is in nature comparison, exists, a duty is cast on the court to use its own eyes and mind to compare the admitted writing with the disputed one to verify and reach its own conclusion, it will not be wrong to say that when a Court seized of a case, directs an accused person present before it to write down a sample writing, such direction in the ultimate analysis, "is for the purpose of enabling the Court to compare" the writing so written with the writing alleged to have been written by such person, within the contemplation of Section 73.

That is to say, the words "for the purpose of enabling the Court to compare" do not exclude the use of such 'admitted' or sample writing for comparison with the alleged writing of the accused by a handwriting expert cited as a witness by any of the parties. Even where no such expert witness is cited or examined by either party, the Court may, if it thinks necessary for the ends of justice, on its own motion, call an expert witness, allow him to compare the sample writing with the alleged writing and thus give his expert assistance to enable the court to compare the two writings and arrive at a proper conclusion.

8. In the show cause notice, the revenue has used the word 'forged' whereas in the reply to the show cause notice the appellant has used the word 'interpolation' in the DOE Certificate. As we have discussed earlier, the subject imported goods appear at S.No. 1 of the DOE Certificate (alleged to be filed by the appellants) which appears on page 10 and 20 of the paper book. Annexure to the DOE Certificate on page 10 is the alleged DOE Certificate filed by the appellant alongwith the other Bill of Entry and on page 20 is the annexure to the DOE certificate obtained by the Department from the office of the Department of

Electronics. So far as this item at S.No. 1 is concerned, there is no interpolation. The only difficulty is that the appellant should have imported 15000 pieces whereas he has imported 20,000 pieces in the present consignment. Apparently there appears to be importation of 5,000 excess pieces. We have already discussed above that from the perusal of the Bill of Entry it can be seen that the appellant has attached the invoices but had claimed the benefit of Notification No.67/85-Cus. dt. 17.3.1985 and had paid customs duty to the tune of Rs. 1,37,660/-. The appellants conduct undoubtedly shows that he had the intention of claiming the benefit of Notification No. 67/85-Cus. dated 17.3,1985. The revenue authorities had raised the query on 21.5.1986 which appears on page 26 of the appellants' paper book showing that in the query there was a mention as to the forged certificate. The appellants thereafter paid the balance duty voluntarily on the basis of Notification No. 232/83 dated 18.8.1983. He did not comply with the procedure of self assessment laid down in terms of Public Notice No.Cus-3/84 issued by the Collector of Customs, Delhi. The challan of Rs. 1,37,660/-bears challan No. 86/1291 dated 13th March, 1986 whereas the challan for the balance amount of Rs. 2,75,357.25 dated 21.5.1986 bears only challan No. 86/-. It is apparently clear that the appellant did not get the challan from the revenue authorities but was filled in by the appellant himself. The Query Memo issued by the Assistant Collector Prabhat Kumar is dated 21st May, 1986 whereas the learned Assistant Collector Shri Prabhat Kumar had signed the same on 22nd May, 1986.

Thus the payment of Rs. 2,75,357.25 was made by the appellant on 21st May, 1986 when the query memo was prepared by the customs authorities but was issued on the other day. In the Bill of Entry the importers claim assessment under a particular heading and also claimed the benefit of a particular notification but the assessing authorities have to assess in accordance with law taking into consideration the correct description of the goods and to classify the same in a proper heading under the Customs Tariff Act, 1975 and in case the importers satisfy the conditions of an exemption notification issued under Section 25 of the Customs Act for concessional rate of duty, the revenue authorities grant the benefit of the notification and in case the importer does not satisfy the conditions the benefit of the notification is declined. In the matter before us the revenue has

invoked the provisions of Section 11(d), (1), (m) and (o) of the Customs Act, 1962 in the show cause notice and has invoked the provisions of Section 111(o) for the wrong claim of the benefit of notification No. 67/85-Cus. for the purposes of assessment and for levy of penalty under Section 112 of the Customs Act, 1962. The appellants had argued that while confiscating the goods the revenue had invoked Section 111(o)and the present importation does not fall under Section 111(o) of the Customs Act, no resort can be taken in respect of other provisions of Section 111(d), (1) and (m). We do not find force in the arguments of the learned Consultant. The Hon'ble Supreme Court in (N.B. Sanjana v. Elphinstone Spinning and Weaving Mills) had held that though no exception could be taken to the proposition that when an authority passes an order, which is within its competence, it cannot fail merely because it purports to be made under a wrong provision, if it can be shown to be within its power under any other rule, and that the validity of an order should be judged on a consideration of its substance and not its form. We are in full agreement with the arguments of Shri J. Gopinath, the learned S.D.R. that though in levying the penalty, Section 111 of the Customs Act, 1962 has been invoked but in view of the Hon'ble Supreme Court's judgment cited by him Section 111(m) could be brought in addition to Section 111(o) but in the matter before us the revenue has not proved forgery. The importer did not attach the alleged forged certificate issued by the Department of Electronics alongwith the present Bill of Entry and there are no interpolations at SI.No. 1 of the annexure attached alongwith the certificate issued by the Department of Electronics. There is also no evidence on record to hold that at the time when the Department of Electronics certificate in connection with other imports was filed whether the interpolations were actually in existence or not in the absence of such a proof and in the face of the assertion by the appellants that they did not make the interpolations.

It would at best be a surmise, suspicion or a guess that the appellants could have caused the interpolation. In this background and absence of expert testimony of the handwriting expert it assumes considerable importance. The Department seeks to draw an adverse inference against the appellants because they gave up the benefit of Notification No.67/85-Cus. and sought the clearance against another Notification No.232/83-Cus. after paying 50% + 25% of duty but this again rests on

the sole ground of suspicion because it was open to the importer to get the goods cleared for various reasons such as avoiding demurrage, protracted proceedings and business exigencies. The matter has to be viewed broadly and it has to be based on legal evidence instead of acting upon conjectures and surmises. The appellant's case is fully covered by the Hon'ble Supreme Court judgment in the case of State of Delhi v. Paliram where in para No. 7 of this judgment Hon'ble Supreme Court has also referred to an earlier judgment of the Supreme Court in the case of Fakhruddin v. State of Madhya Pradesh reported in AIR 1967 SC 1326 in which the Hon'ble Supreme Court had laid down the principle to the effect that a comparison of the handwriting by the court with the other documents not challenged as fabricated, upon its own initiative and without the guidance of an expert is hazardous and inconclusive (at page 17).

9. In view of our above observations, we set aside the impugned order and order deletion of fine in lieu of confiscation of Rs. 5 lakhs (Rupees five lakhs only) and also order deletion of penalty of Rs. 5 lakhs (Rupees five lakhs only). On the issue of extending the benefit of Notification No. 67/85-Cus. dated 17.3.1985, we would like to observe that the appellant had himself paid duty in terms of the notification No. 232/83-Cus. dated 18.8.1983 voluntarily and the appellant himself has laid great emphasis on this issue. After perusing the records we would like to observe that the appellant had paid the differential duty on 21.5.1986 whereas the query memo was signed by the Assistant Collector on 22.5.1986. It is a settled law that the terms and conditions laid down in a notification for extending the benefit of the same have to be construed strictly. In the pre sent matter even for the sake of argument if it is to be considered that benefit of notification has to be extended, the imported item as per Department of Electronics certificate filed by the appellant alongwith Bills of Entries, the appellant was entitled to import 15000 pieces whereas in the present consignment he has imported 20000 pieces. The appellant all along has argued that he did not attach the D.O.E. Certificate dated 24.4.1985 alongwith the Bill of Entry which is the subject matter of the dispute before us. Keeping in view totality of the circumstances, we hold that the appellant is not entitled to the benefit of Notification No. 67/85-Cus. dated 17.3.1985. the appellant had applied for the subsequent certificate issued by the Department of electronics after filing of the bill of entry and the same was also granted which is also before

us and the appellant has referred to the same. The benefit of the subsequent certificate cannot be extended to the appellant as the same was not in existence at the time of the filing of the bill of entry. Accordingly, appellant's request for extending the benefit of Notification No. 67/85-Cus. dated 17.3.1985 cannot be accepted. In these terms we order the modification of the order. In the result the appeal is partly allowed.