

Audio Vision Electronics Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-17-1987

Reported in : (1987)(14)ECC1

Appellant : Audio Vision Electronics

Respondent : Collector of Customs

Judgement :

1. The common grievance of the appellants in these two appeals is against - (1) denial of the concessional rate of customs duty under exemption notification No. 232/83-Customs dated 18.8.1983 and (2) imposition of fine of Rs. 50,000/- (in lieu of confiscation of the imported goods) and penalty of Rs. 10,000/- in each of the two cases for violation of import trade control restrictions.

2. On hearing both sides and on perusal of the record, we find that the appellants obtained an SSI Registration Certificate on 13.11.1984 for manufacture of - During February, 1986, they imported 2 million pieces of ferrite drum core and ferrite cup core. They were to use these goods in the manufacture of RF coils and IF coils which were eventually to be used in the assembly of the aforesaid electronic goods. The lower authorities held the imported goods to be ineligible for the exemption notification as well as for the Open General Licence on the grounds that - (1) the appellants were not Actual Users of the goods despite their having obtained the aforesaid SSI Registration Certificate from the Director of Industries because they had produced nothing during the 1-1/2 years period after obtaining the said Certificate and around the time of import of the goods their factory was

still in the initial stages, (2) their registration was for the aforesaid electronic gadgets and not for RF/IF coils, as such they could import only the immediate components of these gadgets and not the materials for making the components themselves, and (3) the quantity imported by the appellants was far in excess of their own requirements, hence presumed to be for sale in the market and not for actual use.

3. The same arguments were reiterated before us by the learned representative of the department.

4. On careful consideration, we do not agree with the conclusion of the lower authorities. It is common knowledge that there is always a time-lag between issue of industrial licence and actual start of commercial production. Therefore, the fact that the appellants had not produced any end-product between 13.11.1984 and February'86 cannot be held against them. The order-in-original shows that the subject imports were the very first imports made by the appellants and they too got held up by customs. These goods are still under detention. The appellants have placed before us the certificate dated 6.11.1986 issued by the General Manager, District Industries Centre, Raipur to the effect that the appellants imported five more types of components and used them in the production of their end-products. There can, therefore, be no doubt that they were Actual Users and were trying to set up their factory and start production at the time of import of the subject goods.

5. The second objection of the lower authorities fails in the face of the stated objective of the import/export policy of the Government which is to expand production, create more employment in the country and ultimately reduce the out-go of foreign exchange from the country.

This objective is achieved not by undertaking a screw driver technology but by starting with the basic materials and components so that the maximum value addition takes place within the country. We find nothing in the import policy to warrant the conclusion that only immediate components of tape recorders and T.V. sets etc. were intended to be imported and not the materials and components required for making the immediate components, sub-assemblies etc. It is a settled position in law and fact that the component of a component of the machine is also

a component of the machine. We find that an earlier three Member Bench of this Tribunal took a similar view in their order dated 24.10.1985 passed in appeal Nos. CD(SB)2575/83-C and CD(5B)2576/83-C of M/s.

Oriental Importers & Exporters, Gwalior 1987 (29) E.L.T. 709 (Tribunal) and Amar Knitting Works Pvt. Ltd., Gwalior, respectively v. Collector of Customs, Bombay.

6. As regards the third objection of the lower authorities, the appellants have placed drawings of their end-products before us to show that whereas the lower authorities calculated the requirements of RF/IF coils at 7 per gadget, the actual requirement varied from 11 to 21.

That apart, we find no restriction in the Open General Licence as to how much quantity of the permitted items should be imported by an Actual User. In the circumstances, the lower authorities were not justified in interpolating a restriction of their own into the import policy. Imported goods cannot be confiscated on the assumption that the Actual User Importer would most likely sell them in the market. If he does sell them in the market, there are provisions in the Imports and Exports (Control) Act and the Import Control Order to take action against the errant importer. The jurisdiction to do so vests in the Chief Controller of Imports and Exports, it being a post-importation violation, and not with the customs.

7. In the result, we hold that the appellants, being Actual Users, were eligible for the Open General Licence as well as for the exemption notification No. 232/83-Customs. Accordingly, we allow the two appeals with consequential relief to the appellants.

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