

**Collector Of Customs Vs. Davey'S Engineering And Traders**

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

**Decided On :** Aug-03-1987

**Reported in :** (1989)(39)ELT297Tri(Mum.)bai

**Appellant :** Collector Of Customs

**Respondent :** Davey'S Engineering And Traders

**Judgement :**

1. All these three appeals are by the Collector of Customs, Bombay and they arise out of and are directed against a common order in appeal bearing Nos.S/49-46 to 48/861 dated 8-1-1987 passed by Collector of Customs (Appeals) Bombay.

2. The facts necessary for the disposal of these appeals lie in a small compass. The respondents M/s Davey's Engineering and Traders, a small scale industry, Actual Users imported 3 consignments of Metal Cutting Tools Hob cutters and snapper cutters and sought clearance against automatic licence issued in the name of M/s Hindustan Steel and Metal Works, Bombay. The licence was valid for the import of items shown in Appendix 5 of AM 83 and was also issued in terms of Para 32(2) of AM 83 policy book. The respondents were engaged in the manufacture of redrawing of copper and brass tubes, copper tubes and coils. The Customs however objected to the clearance on the ground that the goods imported were not required by the licence holder for use in his factory. The goods imported are used for gear shafting and hobbing on specific type of gear snapper and hobbing machine and are used normally by gear manufacturers.

3. The Deputy Collector of Customs, Bombay who held the Inquiry ordered confiscation of all the three consignments but allowed redemption on payment of fine in lieu of confiscation by three separate orders.

4. Feeling aggrieved by the orders of the Deputy Collector, the respondents herein preferred three appeals before the Collector of Customs (Appeals) Bombay. The Collector of Customs (Appeals) Bombay clubbed all the three appeals and passed a common order. The learned Collector (Appeals) allowed all the appeals placing reliance on the decision of the Tribunal dated 24-1-1985. Being aggrieved by the order of the Collector (Appeals) as stated earlier the Collector of Customs, Bombay had preferred these appeals.

5. During the hearing of these appeals, Shri Prabhu the learned Departmental representative submitted that though the goods imported were covered by Appendix 3 but they were not required by the licence holder (the respondent herein) for use in his factory. The goods imported are used for gear shaping and hobbing of specific types of gear shap-per and hobbing machine and are used normally by gear manufacturers. The gears are finished products and are to be used as spares for the machines used in the licence holder's factory and as such the ratio of the decision of the Tribunal dated 24-10-1985 is inapplicable. He therefore prayed that the order of the Collector (Appeals) may be set aside and the orders of the Deputy Collector may be confirmed.

6. Appearing for the Respondents Shri Pushkama submitted that the licence produced for clearance of the goods was an automatic licence which was granted to Actual Users. The expression "Actual User" has been defined in the Policy as under: - "Actual Users" means a person who applied for/secure a licence for import of any item or an allotment of an imported item required for his own use and not for business or trade in it. Thus, in the case of an industrial undertaking the item concerned shall be utilised for the manufacturing processes or operations conducted within its authorised premises (or made available to jobbing units or other units outside for intermediate processing only as a part of such production efforts)...." Having regard to the above definition, Shri Pushkarna urged that it is not necessary that the goods imported against automatic licence must necessarily

be utilised with the aid of machines installed in the Actual User factory but the policy also permits to get goods processed from jobbing units or other units. Shri Pushkama further urged that the list of machines used in the factory had been furnished to the Department. The list contains several machines which were gears in built. Due to constant use, such gears which are consumable in nature get worn out and they need frequent replacement to have efficient productions. Instead of importing gear shaper and hobbing machines along with their attendant small tools viz. hob cutters, hobs and gearshaper cutters, the respondents have imported only such consumable small tools which are permitted to be imported against their licence.

With the help of these consumable tools they get gears made to replace the worn out gears and this job of getting gears made will be got done from the jobbing units who are in possession of expensive gear shaping and hobbing machines. The hob cutters and hobs and gear shaper cutters will be taken back from the jobbing units after they have manufactured gears required for their use and these metal cutting tools will again be used through jobbing units if and when required. Shri Pushkarna further submitted small scale units, due to financial constraints, cannot install all the machines required for efficient production.

Therefore, the policy makers have permitted part of the production activity through jobbing units. Shri Pushkarna urged that the Deputy Collector was not correct in taking a view that the imported goods would not be required for use in their factory. Since the policy permitted getting certain work done through jobbing units, it cannot be said that there was any violation of the licence conditions or any other provisions of the policy. Finally, Shri Pushkarna urged that the Collector (Appeals) rightly relied on the decision of the CEGAT. Shri Pushkarna placed reliance on the following two decisions of the CEGAT. Oriental Importers and Exporters, Gwallor v. Collector of Customs, Bombay Oriental Importers and Exporters Gwalior v. Collector of Customs, Bombay.

7. It may be stated here that the Collector (Appeals) had relied on the second decision referred to above.

8. The short question for consideration in these appeals is whether the Collector (Appeals) was right in holding that the ratio of the decision in CEGAT Order No.718-719/85-C dated 24-10-1985 was applicable to the facts of the case.

9. In order to examine the correctness or otherwise of the conclusion arrived at by the Collector of Customs (Appeals) it is necessary to refer to the two decisions of the Tribunal relied on by Shri Pushkarna which included the decision of the Tribunal relied, on by the Collector (Appeals). Both the decisions related to the same facts. The parties are also identical. The facts were that M/s Oriental Importers and Exporters and M/s Amar Knitting Works who are the appellants in both the cases were small scale manufacturers of industrial fabrics and hosiery garments. They imported viscose staple fibre under OGL as "Actual Users". They got the fibre converted into yarn on job-work basis outside their own units and then used the yarn so produced in the manufacture of knitted fabrics. Their import of fibre was objected to on the ground that they were not entitled to import fibre as raw material for hosiery goods since the staple fibre was actually the raw material for the yarn produced by the jobbing unit. Eventually the Collector ordered confiscation.

10. in the appeals filed by M/s Oriental Importers and Exporters and M/s Amar Knitting Works Pvt. Ltd., the issue that arose for consideration before the West Regional Bench and Special Bench 'C' was "whether in a case where an actual user imports certain goods as raw materials and gets a product manufactured out of the said material on a job-work basis, by an outside agency, and uses the said manufactured product in his own premises in the further manufacture of the final finished product, they would be eligible to the benefit of OGL as per Serial No.1 of Appendix 10 of the A.M. 82 Import policy in respect of the raw material imported into the country." The West Regional Bench as well as the Special Bench 'C' answered the above issue in the affirmative.

11. From the facts of the two appeals it was clear that the manufacturers of hosiery goods imported viscose fibre as raw materials and got the fibres converted into yarn on job work basis outside their own units and then used the yarns so produced in the manufacture of knitted fabrics. The respondents herein were

engaged in the manufacture of redrawing of copper and brass tubes and copper coils. The goods imported are not raw materials, components, or consumables but consumable tools. The consumable tools did not require any intermediate processing for carrying out the manufacturing activities of the respondents. The consumable tools were not given to the job work for converting them into intermediary products. The tools were given for the purpose of making gears to replace the worn out gears in the machines which were used in the manufacturing activities. The activities carried out by job work cannot be termed or characterised as an "intermediate processing" contemplated in the definition of the expression "Actual User". In the circumstances, there is no scope to draw any sustenance from the decisions of the Tribunal referred to above.

12. Though the import of consumable tools satisfies the first condition of the definition of the 'Actual User', namely, that they were required for their own use and not for business or trade viz. It, however, does not satisfy the second condition viz. the entrustment of the imported tools to jobbing units was for "intermediate processing". The Collector of Customs (Appeals) was wrong in holding that the ratio of the decision of the Tribunal in Order Nos. 718-719/85-C dated 24-10-1985 was applicable to the facts of the appeals before him. I, therefore, set aside the order of the Collector (Appeals) and allow all these appeals and restore the orders passed by the Deputy Collector of Customs.

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