

Atul Commodities P. Ltd. Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-12-2005

Judge : S Kang, Vice-, N T C.N.B.

Appellant : Atul Commodities P. Ltd.

Respondent : Commissioner of Customs

Judgement :

1. A common issue is involved in all these appeals. Therefore, they are being taken up together.
2. In these cases, the appellants made import of second-hand photocopier machines. The Show-cause Notices were issued for enhancing the value of the goods imported by the appellants as well as for confiscation of the second-hand photocopier machines Under Section 111(d) of the Customs Act on the ground that goods in question are consumer goods and required a Special Import Licence.
3. The appellants are not challenging the impugned order whereby the value of the goods imported is enhanced by the Revenue.
4. Appellants are only challenging confiscation of the goods under Section 111(d) of the Customs Act, 1962. The contention of the appellants is that goods were confiscated on the ground that these are consumer goods and not capital goods and required a special import licence. The appellants relied upon the decision of the Larger Bench of this Tribunal in the case of Atul Commodities (P) Ltd. v. C.C.

[Misc.

Order No. 117/05-NB(A) dated 11-5-2005] wherein it was held that second-hand photocopier machines are not capital goods but are consumer goods and the second-hand capital goods are importable without any restriction.

5. The contention of the Revenue is that the confiscation of the imported goods are on account of misdeclaration of value as well as on account of that these are restricted goods and imported without any valid licence. As the appellants are not challenging the enhancement of the value, therefore, the goods are liable to confiscation on this count also.

6. We find that the Larger Bench of this Tribunal in the case of Atul Commodities (P) Ltd. vide Misc. Order No. 117/05-NB(A) dated 11-5-2005 held that second-hand photocopier machines are not capital goods. We have gone through the Show cause notice where only proposal of confiscation is on account of trade restriction imposed under Foreign Trade Policy on the ground that consumer goods i.e. second-hand photocopier machines which were imported without import licence, are liable to confiscation under Section 111(d) of Customs Act. The adjudicating authority confiscated the goods on this ground only. In these circumstances and in view of the decision of the Larger Bench that as the goods are consumer goods and not capital goods and therefore, they are not liable to confiscation under Section 111(d) of the Customs Act. The impugned order whereby the goods are confiscated on this ground is set aside and the appeals are allowed as indicated above. The appellants are also entitled to consequential relief in accordance with law.

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