

La Grande Projects Limited Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-18-2005

Judge : J Balasundaram, Vice, A M Moheb

Appellant : La Grande Projects Limited

Respondent : Commissioner of Customs

Judgement :

1. M/S La Grande Projects Limited of Tikamgarh, Madhya Pradesh (hereinafter referred to as "the Importer") imported 1669 used Diesel Car Engines from Singapore declaring them as Capital Goods for Stone Processing Plant. On enquiries made by the Customs Authorities from the Secretariat of Industrial Approval (SIA), it was clarified by the SIA that used Diesel Car Engines were not permitted to be imported under the licence granted to the Importer. Show cause notice proposing confiscation of the imported goods and proposing imposition of penalty was issued to the Importer. The notice also proposed penal action against Shri Natwar Oalmia, authorized signatory of the Importer, Shri Aditya Kumar Dalmia and Ms Ritu Dalmia, the Directors of the Importer Company. The notice was adjudicated by the Commissioner of Customs, who ordered confiscation of the goods under the provisions of Section 111(d), (f) and (n) of the Customs Act, 1962 with a option to redeem the same on payment of fine of Rs. 125 lakhs. The adjudicating authority has also imposed penalty of Rs. 5 lakhs on the Importer. He dropped the proceedings against 4 notices. The importer is in appeal against the confiscation and penalty, while the Revenue in its appeals seeks enhancement of

fine and penalty on the importer and imposition of penalty on the Directors of the Importer Company.

2. We have heard Shri K.K. Anand, Ld. Advocate and Shri K K, Srivastav, Ld DR. We find that In the case of the same importer covering the import of identical goods, the Tribunal by its final order No.398/2005-C dated 2/05/05 in Appeal No. C/276/97-C upheld the confiscation on the basis of the SIA clarifications that used Diesel Car Engines are not capital goods for the manufacture of granite slabs/tiles and were not covered by the licence, but reduced the fine on the appellants to 30% and held that 5% penalty was reasonable.

Following the ratio of the above order, we reduce the redemption fine to 30% of the CIF value of the goods. By the same token, the penalty imposed upon the Importer is enhanced to 5% of the GIF value of the goods. The prayer of the Importer is that auction proceeds of 248 used Diesel Car Engines auctioned by the Department after the expiry of two months from the date of impugned order, which is the period within which, the option of redemption was to be exercised (the Importer moved the Hon'ble Bombay High Court, which vide its order dated 21/7/97 in WP No. 1084/97 directed the clearance of balance 307 used Diesel Car Engines of the 3rd consignment -other two consignments were already cleared along with remaining Bonnets on payment of redemption fine on pro-rata basis and all the charges including Bombay Port Trust charges), may be adjusted towards the fine amount payable, is to be considered by the Commissioner and we are not passing any orders on this prayer.

3. The appeals of the Revenue against Shri Natwar Dalmia and Ms. Ritu Dalmia are dismissed; as there is no ground in the appeals seeking imposition of penalties on these two persons - all 3 appeals of the Department are identical and the only grievance is that the penalty of Rs. 5 lakhs imposed upon the Importer by the Commissioner is not sufficient.

4. In the result, Appeal No. C/330/97 filed by the Importer and appeal No.C/9/98 of the revenue are partly allowed by reduction of fine and enhancement of penalty respectively, while appeal Nos C/10/98 and C/11/98 are rejected.