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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-27-2005

Judge : J Balasundaram, Vice-, S T T.V.

Appellant : Clough Engineering Ltd.

Respondent : Commissioner of Cus. (import)

Judgement :

1. Vide the impugned order, the Commissioner of Customs has confiscated 20 nos of 16" (400 mm dia) imported Seamless C.S. Pipes seized on 5.6.2003 from trailer trucks en route to M/s. Bombay Metal Works, the purchasers thereof under the provisions of Section 111(o) with an option to redeem on payment of a fine of Rs. 15 lakhs under Section 125, confiscated the trailer trucks with fine of Rs. 1 lakh confirmed a demand of duty of Customs of Rs. 24,67,536/- on the above goods, against the appellant who had imported 459.20 mtrs. of Seamless C.S.Pipes for execution of Laxmi Field Phase I project for petroleum/gas exploration on behalf of M/s. Cairns Energy Pvt. Ltd., Surat by availing benefit of exemption in terms of Notification No.21/2002-Cus., dated 1.3.2002 on the basis of essentiality certificate issued by the Director General of Hydro Carbon, New Delhi as per condition 31 of the Notification and sold goods in dispute as scrap after project confiscation and imposed a penalty of Rs. 5 lakhs on them under Section 112 of the Customs Act.

2. Confiscation arises for the reason that the goods were not found to be scrap but seamless pipes not utilized for project work, and non-utilization resulted in non-fulfillment of post importation condition in Notification No. 21/2002, giving rise to

invocation of Section 111(o); demand confirmation results in denial of benefit in terms of the notification; the extended period of limitation has been involved on account of misrepresentation to Directorate General of Hydro Carbons by the appellants that the entire quantity (including surplus) was required for the project; and penalty has been imposed on the ground to contravention of Section 111(o).

3. We have heard both sides and perused the records. The issue for determination is whether the goods imported in April and September, 2002 are eligible to the benefit of duty free import under Notification No. 21/2002.

4. According to the Notification, goods specified thereunder and falling under specified Chapter Headings of the CTA 1975 are exempt from payment of Customs duty and additional duty of customs subject to certain specified conditions. As per Serial No. 216 of the Table annexed to the notification goods falling under Chapter 84 or any other chapter specified in List 12, required in connection with Petroleum operations undertaken under specified contracts are exempt subject to condition 31 which inter alia provides for production of certificate from a duly authorized officer of the Directorate General of Hydro Carbon in the Ministry of Petroleum and Natural Gas Government of India that the imported goods are required for petroleum operations referred to in Clause (a) i.e. in connection with Petroleum operations to be undertaken under a contract with the Government, of India.

5. The entire dispute in this case revolves around the interpretation of the expression "required for petroleum operations". The stand of the Department is that since the seized goods were in excess of the quantity of pipes actually used in the Laxmi Field Project Phase I by the importers who had entered into a contract dated 29.6.2001 with M/s.

Cairns Energy Pvt. Ltd. for execution of the above project by carrying out engineering, designing, procurement construction, fabrication and installation of two platforms, pipelines and onshore gas processing plant etc., they were not required for the project and hence the condition in the notification had been violated by them. On the other hand, the importers contend that the goods were required for the project as certified by the Directorate General of Hydro Carbon

who is the authority prescribed under the Notification for issue of certificate of requirement, and that there is no stipulation in condition 31 that imported goods have to be actually used in the said project; and therefore sale of seamless pipes is not contrary to the condition of the Notifications.

6. The submission of the importers that there is no end-use condition in the notification has force, in the light of the case law cited before us. In the case of *State of Haryana v. Dalmia Dadri Cement Ltd.* 2004 (178) E.L.T. 13 (S.C.), the Apex Court held that the expression "for use" occurring in Section 5(2)(a)(iv) of the Punjab General Sales Tax Act, must mean "intended for use" and that, if the intention of the legislature was to limit the exemption from sales tax by deduction from 'taxable turnover', only to such goods sold "goods used". The court held that the mere fact that some of the cement supplied to the Punjab State Electricity Board on the basis of certificates issued by the Board to the effect that the cement was required for use in the generation or distribution of electrical energy, was used by the Board for activities not directly connected with activities not directly connected therewith, cannot make any difference regarding the availability of the exemption. The above decision has been followed by the Tribunal in *NOCIL v. Commissioner of Customs (Import), Mumbai* reported in 2000 (126) E.L.T. 1072 in interpreting Notification No.158/76 which exempts raw naphtha intended for use in the manufacture of petrochemicals and extending the benefit there under to the quantity of raw naphtha which had evaporated and hence not consumed in the manufacture of petrochemicals.

7. In the case of *Commissioner of Central Excise Chennai v. Q Max Test Equipment Pvt. Ltd.* the Tribunal has held in the context of Notification No. 56/88 granting exemption to goods required for use of testing of LSI/VLSI etc. that "On my careful consideration of the submissions, as well as the findings recorded by learned Commissioner, I am of the considered opinion that the finding recorded by the Commissioner (Appeals) is just, proper and legal and does not require any interference at our hands. There is no word "used for manufacture" in the exemption notification. On plain reading of the notification, the exemption is available to the item and it is required for manufacture of goods falling under chapter heading 85.42, namely, Electronic integrated circuits and Micro-

assemblies. There is no indication in the notification for production of any end-use certificate. If the item is required for manufacture of goods falling under chapter heading 85.42, then the benefit is required to be extended. In this regard, the assessee's contention is that the item being LSI/VLSI tester, it is eligible for the benefit of the concession as the said item is required for the manufacture of goods falling under chapter heading 85.42. The term used in the notification is "required for manufacture". The simple interpretation that has to be imported to these words are as to whether they are necessary for the purpose of manufacture of goods falling under chapter heading 85.42. It is not for us to include other meanings than to give a simple meaning of its utility in the manufacture of goods falling under chapter heading 85.42. The importation of the term "used in the manufacture of goods" is not proper and to hold that it is required to go into the goods to be manufactured by the assessee himself or by the person who are using it. So long as it is shown by the expert opinion, as has been shown in the present case, that it is required for use for testing of LSI/VLSI circuit micro assemblies and printed circuit board, the benefit has to be extended. In the present case, M/s. Electronic Corporation of India Ltd., a Govt. of India Enterprise has certified that the item is for testing of the said LSI/VLSI etc. In view of absence of any end-use condition in the notification, the benefit cannot be denied. It cannot also be included that the goods are required and sold for the manufacture of items falling under chapter heading 85.42 and it is not necessarily required to go into the final product. A plain reading of the notification indicates that it is enough if it is required for the manufacture of goods falling under chapter heading 85.42. The benefit for the testing equipment which are utilized for testing equipment falling under chapter heading 85.42. Therefore the ruling of the Apex Court rendered in the case of *Sha Harakchand Dharkaji v. CC, Madras* (supra) clearly applies to the facts of the case and is not distinguishable. So also the judgment rendered in the case of *Bermalt (India) Pvt. Ltd. v. GOI and Ors.* will also apply to the facts and circumstances of the case. It was also brought to our notice that in the present case, the Revenue did not obtain any end-use certificate. Neither there is any condition for production of end-use certificate in the notification. Therefore the key for understanding of this notification is to read the notification in simple terms and not to import any other meaning which is not intended in the notification.

The notification exempts the goods specified in the table annexed to the notification falling within Chapter 84 or chapter 85 of Chapter 90 of the First Schedule to the Customs Tariff Act, 1975 and are required for the manufacture of goods, falling under heading No. 85.42 of the said First Schedule. The certificate produced from M/s.

Electronic Corporation of India Ltd. clearly indicates that the item is required for manufacture of goods in question which falls under chapter heading 85.42. In that view of the matter, the Commissioner's order granting benefit on the simple reading of the notification is justified and correct and there is no infirmity in the same. There is no merit in this appeal and it is rejected.

8. The above view recorded by Id. Member (Judicial), who disagreed with the order recorded by Id. Member (Technical) that the benefit of the notification was not available to the respondents, has been concurred with by third member, and by majority order, the appeal of the revenue was dismissed. The Tribunal held that the expression "for use" is on a higher footing than the expression "required for use, and in the absence of the expression "specifically used for manufacture", has extended the benefit of Notification No. 57/88 to LSI/VSLI tes.

equipments falling under Chapter 85.42 and sold to customers other than manufacturers of goods falling under Customs Tariff Heading 85.42 and not actually used for manufacture of electronic Integrated Circuits and Micro assemblies falling under CTH 85.42.

9. In the light of the above decisions and in the light of the admitted position that the project was completed by the appellants which in turn confirms that the 400 MM dia Seamless C.S. Pipes were intended for use in the project we hold that the appellants are eligible to the benefit of Notification No. 21/2002 and hence confiscation duty demand and penalty are not sustainable, and accordingly set aside the same.

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