

**Kinetic Engineering Ltd. Vs. Collector of Customs**

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**SooperKanoon Citation :** [sooperkanoon.com/4435](http://sooperkanoon.com/4435)

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

**Decided On :** Jun-03-1988

**Reported in :** (1988)(17)ECC234

**Appellant :** Kinetic Engineering Ltd.

**Respondent :** Collector of Customs

**Judgement :**

1. The appellants Imported a "Universal Measuring Machine" Model CORDIMET 700. They cleared the machine on payment of customs duty as assessed. They then made an application for refund of differential of the customs duty paid by them on the ground under Notification No.49/78-Cus. Sl.No. 9, the goods were entitled to concessional assessment as "Universal Measuring Instrument to check gauge, tods, jigs and components thereof including internal and external threads". The Asstt.

Collector rejected the claim holding that the imported machine was not capable of checking gauges, tools and components thereof including internal and external threads. The Appellate Collector upheld the decision insofar as the applicability of the notification to the imported instrument was concerned. Hence this appeal.

2. Shri Deshpandey, the learned advocate for the appellants submitted that It can be seen from the catalogue that the imported machine is an instrument (universal measuring machine) and there are various accessories, which if attached to this machine, render it capable of making all the measurements mentioned In Sl. No. 9

of the exemption Notification No. 49/78-Cus. He further submitted that there are various accessories for various purposes. Depending on the need, the importer gets such accessories which are relevant to his purpose. He explained that given all the accessories, all the functions listed in the notification could be discharged by this Imported machine.

3. Shri Gopinath, the learned representative of the department opposing the appellants submitted that according to the Supreme Court judgment In *Dunlop of India* 1983 E.L.T. 1566 (S.C.) the chargeable event in respect of customs duty is the importation. Goods should be assessed as they are at the point of importation. Shri Gopinath submitted that only a few accessories have been imported with the machine and the accessories required for measuring internal and external threads has not been imported. Therefore, at the time of importation, the machine could not have done the measurement listed at SI.No. 9 of the notification.

4. We have considered the arguments of both sides. On a question from the Bench, Shri Gopinath confirmed that use of the accessories listed in the catalogue for the imported machine would make it capable of making all the measurements listed at SI.No. 9 of the catalogue. He further confirmed that all the universal measuring machines have accessories without which they could not do the measurements.

5. We note the arguments of Shri Deshpandey that as the present importer's needs are limited he did not import all the accessories. As the machine needs accessories to do all the measurements, the entry at SI.No. 9 of the notification has to be interpreted to mean that the machine should be capable, with the help of accessories, if necessary, of conducting the measurement listed therein. It is the imported machine's design and capacity for measurement that matters; not the presence or absence of accessories where such accessories are needed and used for measurements listed in the notification. In this view we hold that the imported goods are entitled to the benefit of Notification No. 49/78-Cus. We order accordingly and allow this appeal with consequential relief.