Giesecke and Devrient (India) Vs. C.C.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-14-2007

Reported in : (2007)(116)ECC501

Judge : N T C.N.B., M Ravindran

Appellant : Giesecke and Devrient (India)

Respondent : C.C.

Judgement :

1. Heard both sides and perused the record. The appellant imported a second hand card Personalization Machine and sought duty paid clearance of the machine in terms of a Duty Free Service Entitlement Credit Certificate issued by the DGFT.2. The claim for Duty Free Clearance was rejected under a order dt.

7.4.05 by the Asstt. Commissioner of Customs. First appeal against that order was also rejected by the Commissioner(Appeals). Hence the present appeal.

3. It is seen that the original authority rejected the appellant's claim on the ground that the machine imported, according to appellant's own admission, has no nexus to the service rendered by it. We may read the relevant portion: It was communicated to the department vide party's letter dt. 4.2.05 that Duty Free Service Entitlement Credit Certificate was issued to the company for providing Services for maintenance & repair of the machine supplied to the Reserve Bank of India under a Contract for which the company received consideration in foreign

exchange.

In consequence to a Specific query, the importers informed the department that there is no nexus between the goods imported and the services rendered.

4. The order relied on a clarification dt. 9.3.04 of DGFT to the effect "Goods allowed to be imported under this scheme shall have nexus with the service rendered" for rejecting the claim of the appellant.

5. This view was upheld by the Commissioner also. A perusal of the record shows that the appellant had stated in his letter dt. 4.2.05 that the imported machine had nexus with the service. The letter said "the machine would be used for the main line of operations of the company". We may read the explanation offered by the appellant: The Company has provided services for maintenance and repair of the machines supplied to the Reserve Bank of India under a contract for which G&D received consideration in foreign exchange. The Company had applied for Duty Free Credit Entitlement Certificate ('the Certificate') (Annexure - I) in terms of Para 3.8 of the relevant Export Import Policy 2002-07 read with para 3.18 of the Handbook of Procedures - now Foreign Trade Policy ('the Policy'). The office of the Director General of Foreign Trade ('DGFT') issued the Certificate on 22.4.04 allowing the company to import goods against the same. Accordingly, the company imported Card Personalization Machine ('the Machine') against which it intends to use the credit allowed in the Certificate. However, a view was taken by your office that prima facie there is no nexus between the goods imported and the services rendered and that the Company needs to establish such nexus in terms of the Policy Circular No. 29 (RE 2003)/02 dt. 9.3.04 ('the circular'_ (Annexure - 2) issued by DGFT. The company wishes to highlight that the Machine has been imported in accordance with the terms of the governing customs Notification No. 54/03-Cus dt. 1.4.03 ('the notification') (Annexure - 3). As per the Notification, there is no requirement of establishing a nexus of the imported capital goods with the services rendered. Moreover, the Policy too does not provide for such a condition to be satisfied for imports under the Certificate. The intention of the Policy, as also evident in the Notification, was not to provide such a restrictive interpretation to the applicable scheme and the benefit thereunder was required to

be extended to all capital goods imports by the certificate holder.

The Card Personalisation Machine is used for printing the International Chip Card ID ('ICC ID') on a GSM sim card. The Machine also personalizes the chip/sim card by putting various inputs into the chip to give it a unique identity as desired by the customer of G&D (In this case, a mobile service provider). This would generally include inserting International Mobile Subscriber Identity ('IMSI'), secret key called KI, used for authentication of the sim card with the network, ICCID, browser applications, specific toolkits, SMS centre no. etc. Similar personalization activities can also be performed with the Machine on debit/credit cards for the banking industry by inserting key data in the chip with a small modification in the software. The Machine would be used for the main line of operations of the Company.

It is clear from the services rendered by the appellant that it is in the financial sector service relating to currency credit cards, mobile phone etc. This instrument is used in those sectors for the personalization of those instruments as explained by the appellant. In this view of the matter, we are unable to find any merit in the finding that there is no nexus between the imported machine and the appellant's service. We have already noted that such a finding was reached on a total misunderstanding of the appellant's communication dt. 4.2.05.

6. Ld. Counsel for the appellant has contended that the authorities were not entitled to press the ground of nexus against it. The contention is that in the absence of such a stipulation in the exemption notification as well as (Duty Free Credit Entitlement Certificate) the authorities cannot, through a clarification impose restrictions on the utilization of the certificate. Ld. Counsel has pointed out that this position remains settled by the judgment of the Hon'ble High Court of Bombay in the case of Narendra Udeshi v. UOI . We find merit in this contention also.

The legally valid provisions on the subject are the exemption notification, Duty Free Credit Entitlement Certificate. The certificate mentioned the items eligible for import as "goods not covered by negative list" exemption notification also contained no restriction.

The contrary to these statutory provisions, the authorities could not have introduced further restrictions and thereby reducing the scope of the imports to the personal opinion of officers.

7. In view of what is stated above, the impugned order is set aside and the appeal is allowed with consequential relief to the appellant.