

Fine Blanking Pvt. Ltd. Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jun-05-1989

Reported in : (1990)LC188Tri(Chennai)

Appellant : Fine Blanking Pvt. Ltd.

Respondent : Collector of Customs

Judgement :

1. This is an appeal against the order of the Collector of Customs, Bangalore. Brief facts of the case are that the appellants imported a second hand Feintool Fine Blanking Press valued at Rs. 14,41,772/-. The examination of the goods revealed that the appellants had alongwith this machine imported certain other machines viz. Strip Straightener machine, Decoiler machine and Surface Grinding machine. These 3 machines were not declared in the Bill of Entry and were claimed by the appellants as standard accessories of the Press. The appellants also produced a certificate from an Engineer about the life of the second hand machine, which was purported to be a Chartered Engineer's certificate, which according to the lower authority was required to be produced under Para 30(1) of the Import Policy. Proceedings are instituted against the appellants on the following grounds: (1) the 3 allied machines should not be treated as separate machines having in dependent functions, and why the same should not be confiscated for clandestine import; (2) why the certificate produced by them should not be considered invalid in terms of the Import Policy; (3) why the entire goods should not be considered imported in violations of ITC Regulations and as such, confiscated under Section

111(d) of the Customs Act, 1962; (4) why the goods should be denied Project Import concessions for violation of the ITC Regulations and for non-fulfilment of the Project Import Regulations; (5) why the Lubricating oil of such large quantity should not be confiscated for non-production of NOC from the Canalising Agency;

2. The findings of the learned Collector in respect of the above are as under:- "(1) The examination of the goods revealed that these are manufactured by manufacturers other than the manufacturer of the press viz., Weingarten AC, Neederberger Co. & Bosch, all German firms, while the Press is manufactured by Feintool AC, Switzerland.

(2) The catalogue of the press submitted by the importer, shows the standard and optional accessories and none of these machines figures therein as standard or optional accessories.

(3) The project report of the importer shows that these machines were to be procured indigenously. The importer at the time of personal hearing stated that these machines available in India are not suitable and hence they had to import them with the second hand press. These facts clearly indicate that these machines are not standard accessories.

(4) The catalogue shown at the time of personal hearing indicates that these machines are peripheral equipments which are not standard accessories.

(5) Their contention that they had clearly indicated these machines in their application to CCI & E does not also appear to be correct.

The original application to CCI & E has not been produced. The subsequent re-validation application has no enclosures. Nor they have produced any clarification from licensing authorities that the licence is valid to cover these extra machines. The licence produced specifically covers fine blanking machine only.

(6) In a factory/plant, a number of machines may be required to produce goods. All such machines do not become accessories of the main/other machines.

Thus these machines are separate machines having independent functions and these machines have been imported clandestinely by misdeclaring them as

accessories of the fine blanking press without the cover of a valid import licence. Therefore, these goods are liable for confiscation under Section 111(d) & (m) of the Customs Act, 1962.

Similarly, the lubricating oil in such large quantity cannot also be imported without the NOC from IOC Ltd., as per Chapter IV Para 224 of Hand Book 88-91. Party has not produced requisite NOC. Import of oil is therefore in contravention of ITC Regulations and oil is liable to confiscation under Section 111(d) of the Customs Act, 1962.

The violations of ITC Regulations are established beyond doubt. As such, the goods are also not eligible for the concessional assessment under Project Import Regulations since provisions of Regulation 0.5(2) of the Project Imports Regulations are not satisfied.

In view of the above findings about contravention of I.T.C. restrictions and misdeclaration, I hold the imports liable to penalty under Section 112(a) of the Customs, Act, 1962." The Collector, therefore, confiscated the goods under Section 111(d) & (m) of the Customs Act, 1962 and levied a redemption fine of Rs. 2,50,000 and also a penalty of Rs. 50,000 under Section 112(a) of the Customs Act and denied the appellants the benefit of Project Import Regulations.

3. The learned Consultant for the appellants, Shri C. Chidambaram, reiterated the plea that the, 3 machines found not declared in the Bill of Entry were accessories of the main machine. In the face of the findings of the Collector when he was asked to explain as to how these 3 machines could be considered as accessories, he had no explanation to offer in this regard. He was also asked that when the import of the machines had been allowed by name and when there was no mention of any accessories of the main machine in nature in the licence, under what provisions of law the same could be allowed to be imported, he fairly conceded that he had no legal provision to cite in support of the plea.

In view of these facts and circumstances of the case, we find that so far as the 3 machines described as accessories are concerned, the findings of the Collector are well-founded and maintainable in law and are, therefore, upheld.⁴ In regard to

the main machine and the necessity of production of a Chartered Engineer's certificate in terms of para 30(1) of the Import Policy, the learned Consultant pleaded that this condition has been stipulated in the Import Policy in the context of import of second hand machines under OGL. He pleaded that the appellants had imported the goods under a valid licence and there was no legal requirement for the production of a Chartered Engineer's certificate for the importation of the machine. The said para 30(1) of the Import & Export Policy for 1988-91 for convenience of reference is reproduced below:- "30 (1) Items of machinery allowed for import under Open General Licence (vide Appendix I, Part B) can also be imported in second-hand condition. In such cases, however, the importer will produce to the Customs authority at the time of clearance, a certificate from a professional independent Chartered Engineer/any Institution of Engineers in the country from which import is made, in the prescribed proforma given in the Hand Book of Procedures, 1988-91." The plea is that inasmuch as the goods were imported against a licence the conditions applicable to imports under OGL could not be made applicable in their case. In that view of the matter, the Consultant pleaded, if at all the appellants could be held guilty for any violation it could be only in respect of the 3 machines and nothing else.

5. The learned Senior D.R. for the Department adopted the reasoning given in the Collector's order. He pleaded that since a second hand machine had been imported the Chartered Engineer's certificate was required to be produced. He, however, could not say as to how in the face of the specific provision for the production of the certificate in case of imports made under OGL only the same could be made applicable in respect of imports of second hand machinery irrespective of the fact whether the same are imported under OGL or against an import licence.

6. We observe that in so far as the main machine imported by the appellants is concerned there is no specific challenge that the same is not covered by the description of goods in the licence produced. The point for consideration is whether in the absence of the Chartered Engineer's certificate import could be held as violative of any licensing condition as incorporated in the licence or in the Import Policy. So far as the import licence is concerned there is no stipulation that

the goods would be allowed importation subject to the production of a Chartered Engineer's certificate. So far as Import Policy is concerned we observe that there is a specific provision requiring the production of a Chartered Engineer's certificate in respect of the import of second hand machine under OGL and there is stipulation also about the life of the machinery which can be imported under OGL. The same para, we observe, covers the Policy for import of second hand machinery other than that covered under OGL and the steps have been laid down before a licence for import could be issued. There is no specific requirement for production of a Chartered Engineer's certificate in such cases. No doubt, the examination and assessment of the second hand machinery poses some problems with regard to the age of the machinery, its value, etc. and the Chartered Engineer's certificate provides an aid for these purposes. But merely the absence of the same cannot render the importation as violative of the Import Policy rendering the goods liable for confiscation under Section 111(d). In the absence of any specific legal requirement in this regard, if the Collector had any doubt about the value or age or declaration about the machinery imported he could have called for any contemporaneous or other evidence. He can also rely upon the evidence placed before the Licensing authorities in this regard when the appellants applied for the licence for importation and on the basis of which the Licensing authorities issued the licence. We find that the Collector has not done any enquiry in this regard and has merely relied on the absence of the certificate to hold the importation as violative of the Import Control Law and confiscated the same. This is not maintainable. We, therefore, hold that the Collector's order in the facts and circumstances of the case is not maintainable in so far as the confiscation of the main machine is concerned. We, however, remand the matter to the Collector for de novo consideration as to whether the machine as such conforms to the description as given in the licence and whether its value is acceptable for the purpose of assessment after taking into consideration the evidence on record including the Engineer's certificate produced as also any other evidence that the Collector may choose to rely upon. Collector can also call upon the appellants to produce whatever evidence is within their reach. We are doing this reluctantly as we find that the Collector has passed the order without going into other aspects regarding the acceptance of the value and the declaration as given by the

appellants. We, therefore, set aside the order of the Collector by remand to decide the matter de novo in the light of what we have held above after giving the appellants an opportunity of hearing and to produce evidence in support of their pleas. The appeal is thus partially allowed by remand in the above terms.

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