

**Amar Traders Vs. Collector of Customs**

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

**Decided On :** May-16-1990

**Reported in :** (1991)(32)ECC53

**Appellant :** Amar Traders

**Respondent :** Collector of Customs

**Judgement :**

1. This is an appeal directed against the order in Original No.S/10-75/84-K, dated 11-7-1984 passed by the Addl. Collector of Customs, Bombay ordering confiscation of the goods under Section 111(d) of the Customs Act read with Section 3 of Imports and Exports (Control) Act, 1947 but allowing redemption on payment of fine, in lieu of confiscation, of Rs. 20,000/-.

2. The appellants were granted Project Import Licence No. 1958559, dated 7-1-1983. This licence contained a condition that the order be placed to the overseas suppliers within a period of 6 months from the date of issue of licence. The appellants opened Letter of Credit (L.C.) on 16-6-1983 which according to the department was, however, subsequently amended on 12-4-1984 with an alteration in the conditions namely "shipment latest by 15-5-1984 and negotiations latest by 31-5-1984." There was also an amendment in the L.C. in so far as value of the goods was concerned. The appellants under the said licence imported 6 sets of high speed auto fabric needle looms. The import was objected to and the clearance was denied to the appellants on the ground that the appellants had not complied with the terms of the licence inasmuch as, they had not placed the order

within a period of 6 months from the date of issue of the licence and that subsequent modification in the L.C. tantamount to placing of an order afresh only when the amendment in the L.C. was carried out which was beyond the period of 6 months from the date of issue of licence. The appellants waived the Show Cause Notice and submitted that the amendment was carried out in the L.C. only because the price was increasing and that on account of further negotiations, the shipment was delayed. The adjudicating authority disbelieved the plea raised by the appellants and passed the impugned order.

3. Shri Anil Balani, Ld. Adv. appearing on behalf of the appellants submitted that the licence was issued on 7-1-1983 and the order was placed on 8-6-1983. L.C. was opened on 16-6-1983. According to his submission, the placing of the order and opening of the L.C. was within the period of 6 months from the date of issue of licence. In his submissions, because of certain exigencies, namely variation in the price, that the foreign suppliers directed the appellants to enhance the value of the L.C. opened. Hence, modification in the L.C. was carried out on 12-4-1984. In his submissions, such variation could not be considered as non-fulfilment of the conditions laid down in the licence. He pleaded that what was contemplated under the licence was placement of the order which was already done on 8-6-1983 as is reflected from the indent and which was not a fact challenged by the department. The alteration in the L.C. had no relevance in so far as the placement of the order was concerned. In his submissions, the order was already placed before the foreign supplier and alteration in it reveal only the modification as regards to price of the goods to be supplied. In his submissions, there was no breach of the conditions imposed in the licence. The order was undisputedly placed within a period of 6 months and that therefore the objection raised and confiscation of the goods ordered by the department are not sustainable and ought to be set aside.

4. Shri Deepak Kumar, Ld. JDR appearing on behalf of the department submitted that the firm's order could not be taken to have been placed unless and until irrevocable L.C. was opened and here the irrevocable L.C. was opened only on 12-4-1984 which was beyond the period of 6 months. The earlier L.C. opened was not irrevocable L.C. as there was some modification in the same and new L.C. had come into existence. He, therefore, submitted that the order passed by the Addl.

Collector of Customs was just and proper and calls for no interference.

5. Considering the argument advanced by both the sides, it appears an undisputed position that the ITC licence issued in favour of the appellants was subject to only one condition that the order was to be placed with the overseas suppliers within 6 months from the date of the issue of the licence. There is no challenge to the factual position that the order was placed on 8-6-1983 and L.C. was opened on 16-6-1983.

Both these things were obviously within a period of 6 months from the date of issue of licence which period was to expire on 7-7-1983.

6. Only objection raised by the department is that, because there was amendment in the L.C. initially opened within a period of 6 months, initial L.C. opened was deemed to have been non-existent and that modified L.C. which came into effect from 12-4-1984 being the one which was valid. The order placed with the foreign suppliers has to be deemed to be effective from the date of opening of the amended L.C. which according to the department was beyond the period of 6 months. As mentioned earlier, the only requirement under the terms of the licence was to place an order with overseas suppliers within a period of 6 months. The contents of the licence does not mention that L.C. also ought to be opened before the same date. It is known fact that the opening of a L.C. is not an essential requirement for placing an order as the amount could also be paid directly to the suppliers through the mode other than the Bank. The opening of the L.C. being not an integral part for placement of an order, modification in the L.C. could in ordinary circumstances, not be taken as ground for holding that order placed earlier was also modified. Here, it is not the case of the department that there was also a modification in the order placed which, according to the appellants, was placed on 8-6-1983. In any case, it must have placed before the 16th June, 1983 when the original L.C. was opened. There is no alteration alleged as regards the order placed. When the licence calls for placement of the order only and when no material alterations in the order initially placed is alleged and when the only ground of objection is modification in the L.C. which for the reasons stated above has not materially effected the order initially placed, the objection raised by the department

in clearing the goods under the licence does not appear to be justifiable.

7. In the result, the appeal is allowed and the order passed by the Addl. Collector (Customs) is set aside. Consequential relief to follow.

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