

**Kerala State Electronics Dev. Vs. Collr. of Customs**

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

**Decided On :** May-31-1990

**Reported in :** (1990)(29)ECC262

**Appellant :** Kerala State Electronics Dev.

**Respondent :** Collr. of Customs

**Judgement :**

1. At the outset Shri K. Narasimhan, Ld. Advocate prayed for admitting the Misc. Application for additional evidence and additional grounds.

"Appellants submit that after having ascertained that the impugned goods were still lying in the Bonded Warehouse based upon a report from Asstt. Collector (Corr.), the Collector of Customs (Appeals) should have held that upon clearance from the warehouse any time on or after 1-3-1983 the impugned goods would be eligible for grant of exemption against the revised description of Sl. No. 76 of Notification No. 118/80-Cus., dated 19-6-1980, as amended by Notification No. 55/83-Cus., dated 1-3-1983. The final conclusion of the learned Collector of Customs (Appeals) that the description under Serial No. 76 of the notification aforesaid as it stood at the time of import of the impugned goods would determine the rate of duty is not sustainable in law." 2A. The additional evidences were the two ex-bond bills of entry under cover of which goods were cleared from the warehouse. He, however, did not press for admission of the additional evidences. Shri K. Narasimhan submitted that the additional ground was to prove that the Collector (Appeals) having ascertained that the goods were still in the warehouse ought to have

passed an order for clearance from the warehouse of the goods as per the amended Notification No. 55/83-Cus., dated 01-03-1983.

3. Shri M.S. Arora, Ld. JDR contended that the order of the Asstt.

Collector related to the goods covered under Bill of Entry 101/06-10-82 and No. 206 dated 16-11-82 and at that relevant time the notification in force was 118 dated 19-06-1980 and goods imported were found not eligible for the concession under notification, and had denied the concessional assessment. The Collector (Appeals) had upheld the order of the Assistant Collector. The appeal before the Tribunal is in respect of the goods which have been subsequently warehoused when there was no order in respect of the changed circumstances, the additional ground becomes irrelevant. He opposed the additional evidence and objected to its being allowed.

4. In disposing the Misc. Application, we find that additional grounds of appeal which are of a legal nature can be allowed in the light of the judgment of the Supreme Court in C.I.T. v. Gangappa Cables -1979 (116) ITR 778 and accordingly allow the additional ground, but, however, for allowing the additional evidences, as they are not part of the proceedings that were available before the original and lower appellate authorities, the same cannot be allowed now.

5. The appellants are engaged in the manufacture of Television Receiver Sets. They placed orders for T.V. test pattern generator etc. with M/s.

Philips, Holland and for the Modulator and Transmitter with M/s. Rhode and Schwartz, West Germany. They imported the items under two Bills of Entry. The T.V. Synch generator, monochrome test generator, test pattern generator were imported under Bill of Entry No. 206/16-11-82 and Modulator and Transmitters under Bill of Entry No. 101/06-10-1982.

The Notification No. 118/80 under Sl. No. 76 allowed a concessional duty if all the three items figuring therein, were imported, which was interpreted by the department to mean that it should be imported in one consignment. The notification got subsequently amended, and under Notification No. 55/83 dated 1-

3-1983 which permitted the concessional rate if one or more of the items were imported. In the additional grounds of appeal, it was their contention that the Collector (Appeals) was wrong in upholding the order of the Assistant Collector, as he was aware of the fact that the goods were warehoused and should have taken note of the amendment to the notification and ordered for application of the rate of duty prevailing at the time when the warehoused goods were cleared as per the provisions of Section 15(1) (b) of the Customs Act.

6. Shri K. Narasimhan, reiterated the above submissions and drew pointed reference to the order of the Collector (Appeals) wherein he has stated that from the letter of the Asstt. Collector dated 28-09-1983, he was aware that the goods are in bonded warehouse and had not been cleared. The letter which was referred to was found to be dated 28-5-1983 as ascertained by the Ld. JDR from the records and Shri Narasimhan the Ld. Advocate stated that when the order in appeal was issued dated 5-2-1984 the goods had been cleared from the warehouse and the Collr. (Appeals) should have taken note of the changed circumstances and applied the statutory provisions.

7. Shri M.S. Arora, Ld. JDR, however, maintained that the order of the Asstt. Collector referred to the Bills of Entry filed for home consumption which were dated 6-10-1982 and 16-11-1982 and at the relevant time the notification in force was 118/80, which did not extend the concession to the goods which had been imported under different consignments, and the order of the Asstt. Collector was correct, and the order-in-appeal was with reference to those goods which were in dispute before the Assistant Collector, which were for clearances for home consumption and against the order of the Assistant Collector the appellants went in appeal before the Collr. (Appeals).

Therefore, the appeal before the Tribunal was subsequent to the altered situation when the goods have been warehoused and this situation was not before the Assistant Collector and as such the appeal before the Tribunal is redundant.

8. The submissions made are considered. The relevant Notification 118/80, S. No. 76 reads as follows :- (i) TV synch generator, monochrome test generator, test pattern generator.

This notification was amended by Notification No. 55/83 dated 1-3-1983.

The text of the notification is as under :- (a) for Sl. No. 76 and the entries relating thereto, the following Sl. No. and entries shall be substituted, namely :-

Sl. No.	Description
76	Central Signal supply for television testing comprising one or more of the following :- The goods were in the first instance proposed for clearance under two Bills of Entry No. 101/06-10-82 and No. 206 dtd. 16-11-82 when Notification No. 118/80 was in force. As per the notification, Sl. No.76 of the table Central Signal supply for Television testing comprises of :- (i) T.V. Synch generator, monochrome test generator, test pattern generator, The notification was available only if the equipment comprised of the items mentioned. The amending notification made the modification "comprising of one or more of the following." In effect on and from 1-3-1983 the goods on importation even if comprising of one or more of the items were eligible for the concession, the Collector (Appeals) was aware of the fact that the goods were warehoused. In their appeal memorandum before the Collector (Appeals) they have stated that the goods are in the licensed warehouse; therefore the Collector (Appeals) ought to have taken into consideration the changed circumstances and accordingly decided the appeal. Since the order of the Collector (Appeals) in upholding the order of the Assistant Collector which was under a different set of circumstances which did not prevail when the appeal was under consideration, in the interest of justice, he ought to have given a proper finding on the facts under the revised circumstances. His order with reference to the goods that were covered by a home consumption Bills of entry and which were subsequently replaced by "Into Bond bills of entry" was out of context. Therefore, we hold that the order of the Collector (Appeals) was incorrect and he should re-examine the appeal in the context of the changed circumstances. The appeal is, therefore, remanded back to the Collector (Appeals) to take into consideration the circumstances prevailing after the decision of the Asstt. Collector, and issue a reasoned order after fulfilling the principles of natural justice. The appeal is allowed by way of remand.