Collector of Customs Vs. Perfect Machine Tools Co. Pvt.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-04-1991

Reported in : (1992)(37)ECC51

Appellant : Collector of Customs

Respondent : Perfect Machine Tools Co. Pvt.

Judgement :
1. The Revenue has issued a review show-cause notice, dated 12-7-1982 in exercise of its powers under Section 131(3) of the Customs Act for setting aside the order of the Appellate Collector and same stands transferred to the Tribunal.

2. The issue was with reference to the fact that the importer - M/s.

Perfect Machine Tools Co. (P) Ltd., imported a consignment of 'Kilingelnberg Involute' and 'Helix Tester', Model PFS-600, complete with accessories/attachments vide bill entry No. 1726/171, dated 30-12-1978. The main equipment and electronic measuring and recording unit was assessed to duty at 25% ad valorem in terms of Notification No. 49/78. The Electronic Pitch Test Attachment with slide and Base which was an optional accessory, was assessed to duty at the standard rate and the exemption Notification No. 49/78 was denied. The importer's claim for lower rate of assessment was rejected by the Assistant Collector. On appeal, the Appellate Collector allowed the appeal, ordering that the Electronic Pitch Test Attachment be assessed at the lower rate. This, however, was not found correct by the department as the Electronic Pitch Test Attachment with Slide and Base is used for measuring the pitch of the gear and not for gear profile and helix, that the main equipment can be used as gear and profile helix tester without the electronic pitch test attachment. Further, it was seen from the invoice that it was supplied as an additional equipment at extra cost for the electronic measuring and recording unit. The electronic pitch test attachment was not a standard equipment required for the working of the tester and the Accessories (Conditions) Rules, 1963 were not satisfied and Notification No. 49/78, dated 1-3-1978 was not applicable. The review show-cause notice was issued.

3. Presenting the department's case, Shri M. K. Sohal, the learned JDR, pointed out that this was a special equipment, without which the main equipment was capable of functioning. The catalogue produced before the Assistant Collector clearly showed that this was a special equipment available at extra cost. The catalogue mentioned that the standard equipment is an electrical equipment, comprising of a built-in control cabinet, control panel, one drive motor for 110/220 volt A.C. 50 Hz.

supply (when placing an order, please state existing main supply, special requirements may involve additional costs) switch gear, relays fuses. Therefore, this being a special equipment at extra cost, it is not an essential requirement for the working of the main equipment and the Notification No. 49/78-Cus., dated 1-3-1978, which is for the gear profile and Helix Tester, cannot be extended to this special equipment.

4. Shri N. Ramanathan, the learned consultant for the Respondents, claimed that the order of the Appellate Collector was correct and he had duly considered the scope of the equipment and had concluded that the Notification was available to the item. The Technical Expert Shri Y.N. Athavale, Dy. General Manager of M/s. Perfect Machine Tools Private Ltd., explained the functions of the equipment and its position as given in the catalogue. He filed an affidavit to certify that the Involute and Helix Tester PFS-600 is essentially designed to perform various range of applications for gear testing, which also include pitch testing and that the machine design is such that the pitch testing equipment itself cannot function independently

of the main machine. Shri Ramanathan, Consultant cited the following case laws in his favour :Escorts Ltd. v. The Collector of Customs.The Collector of Customs v. Blue Star Limited.

5. Shri M. K. Sohal, learned JDR, filed his written comments on the affidavit which is reproduced below : "In para 5, it is accepted by Shri Athavale that "A particular client may go in for a special attachment". This shows that the Pitch Testing Attachment is a special attachment and it is not required by all the clients and the machine is complete without this attachment.

Again in para 5, it is said "They needed the Electronic Pitch Testing Equipment for testing pitch error in addition to Gear Profile and Helix Testing for which the machine is mainly intended".

This clearly proves the point of view of the revenue department that the pitch testing attachment is an additional attachment without which the Gear Profile and Helix Testing machine is complete. It also proves that pitch testing error is an additional test in addition to Gear Profile and Helix Tests. The Gear Profile and Helix Tests can be done by the machine without this additional attachment.

In the last para, it is certified by Shri Athavale that "Our client selected type M-17T pitch testing equipment to be incorporated in the involute and helix tester PFX-600 in view of the functions desired to perform". Here also once again it is accepted by the importers that the machine 'Involute and Helix Tester PFX-600' is complete without this additional attachment and the pitch testing attachment is specially attached, at the order of the buyer so as to help them to perform some more functions in addition to those which this machine is performing, i.e. Gear Profile and Helix Tests.

In the same para, it is certified that "The machine design is such that the pitch testing equipment itself cannot function independently with the main machine". This also shows that the machine is complete without the pitch testing equipment but it is not vice-versa. The pitch testing equipment, no doubt, is dependent for its functioning on the main machine but the machine is not dependent for its running on the pitch testing equipment." 6. The submissions made are considered. The working of the Pitch Tester is given in the catalogue as under : "Pitch tests can be performed on an easily rotatable test gear after involute and helix angle tests have been completed It only requires the preselection of pitches to be measured on the electronic control unit, after which the pitch tracer styli have to be applied to two adjacent tooth flanks of a comparative pitch which is selected at random.

The two pitch tracer styli are advanced successively into the tooth gaps from one to the next pitch. Manual operation of the E 35 slide, which can be preset to a specific length of stroke, is by means of a crank mechanism which is completely free from shock. The simple operation, requiring only 2-3 seconds per pitch, does not cause any operator fatigue.

An exially, spring-loaded hall-type tracer stylus orientates the gear in relation to the tracer head position before the pitch tracer styli advance into the tooth gap and when the pitch tracer styli are applied to the tooth flanks. Counting pulses and measuring signals are transmitted to the electronic control equipment where they are stored and the mean values calculated automatically. Tooth to tooth pitch errors are recorded simultaneously by the Makrograph Unit. As soon as the pre-selected number of pitches has been tested, the Makrograph Unit records the electronically calculated mean value as a continuous line right across the pitch error diagram, thus providing the information on individual pitch errors - refer to the left hand section of Fig. 35. The M 17ts equipment (Fig. 35 at the right) also records automatically the cumulative pitch errors which are calculated successively whilst proceeding from pitch to pitch and added up by the electronic control equipment. Cumulative pitch error values remain stored until a new test sequent starts or until the tester is switched off. These stored values can then be recorded repeatedly as often as is necessary and at 8 different reducing scales."
7. The purpose of this equipment is to complete testing of gears with the help of a computer at a greater speed than testing the gear by manually operated equipment. It is fitted with the main equipment and cannot by itself function independently, it is meant for the efficient working of the main equipment to produce better and accurate reading.

The Notification No. 49/78-Cus., dated 1-3-1978 as amended, lists the type of goods which carry a concessional rate of duty. Sl. No. 2 of the table refers to "Gear Profile and Helix Testers". An attachment which is used with the Tester cannot be excluded from the scope of the notification. No specific condition for such exclusion is mentioned, so long as it is imported along with the main equipment which is eligible for the exemption, it cannot be denied the concession. Invoicing separately does not carry any significance and as such the appeal filed by the Revenue has no merits and is dismissed.