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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-05-1991

Reported in : (1991)(56)ELT897TriDel

Appellant : Usha Microprocess Controls Ltd.

Respondent : Collector of Customs

Judgement :
1. The appellants herein imported the following as described in the Bill of Entry No. 7058 dated 7-2-1986 :-"PCR & Comp. Parts PCXT Customs Tariff Heading/Exemp- tion NotificationConnectors 67/85 dt. 17-3-1985PCB (multilayer) Capacitors 85.18/27 On scrutiny of the documents and examination of the goods the department issued a show cause notice dated 27-5-1986. It stated, inter alia, as follows :- The importers made a declaration under OGL Appendix 6, list 8 Pt. I serial No. 565 of the Export-Import Policy, 1985-88. They also made a declaration on the back of the B/E regarding correctness and truthfulness of the various documents such as Packing List, Invoice etc. submitted alongwith the B/E. The importers, claimed concessional rate of duty on the components of PC/XT as follows :--Sl. Description of GIF value Rate of duty & Notfn. Amount ofNo. goods.

declared No. duty Rs. Rs.1.

L.S.I.C. 2,87,339/- 25% (67/85 dt.17-3- 71834.75 85)3.

PCB,Resistors 67,892/- 50%(basic) 25% 35919.00 etc.

(Aux.) (232/83 dt. 18- 8-83) 1.1 Main allegations levelled in the show cause notice against the appellants are :- (i) The appellants claimed concessional rate of duty under Notification No. 67/85 dated 17-3-1985 against a certificate from the Department of Electronics (DOE) Nos. 014 and 049, although these certificates had been actually attached with other bills of entry under process in the Custom House.

(ii) Examination of the DOE certificates attached with the bill of entry with the office copy of the certificates available with the DOE revealed that there was substantial extrapolation/interpolation in the description of the goods and the quantity of the goods mentioned in the certificates. It was alleged, inter alia, that the original copy of the DOE certificate did not contain most of the integrated circuits imported by the appellants as PCXT components.

The goods large scale integrated circuits (LSI) were found to be ordinary ICs/SSis/MSI as verified from TTL Data Book from Fairchild. (iii) As regards 13650 pcs. of connectors, the appellants claimed the concessional rate of duty under Notification No. 67/85 and produced a certificate No. 049 dated 24-5-1985 for making a quantitative debit of connectors. It was also alleged that on comparison of the above certificates produced by the appellants with the original copy taken from the DOE, there had been a manipulation of quantity from 125 pcs. per computer of AM 1000 type to 1125 pcs.

Thus enhancing the quantity of connectors by one lac pcs. for 100 pcs. of computers AM 1000.

(iv) It was also alleged that the appellants submitted a locally prepared copy of the invoice and the packing list. The true copy of the invoice which had been seized from the importers' record of the documents at their factory premises for the consignment PCB and components for PC/XT was meant to be submitted alongwith the Bill of Entry No. 50872 dated 5-11-1985. The true description of the goods and their correct individual values were shown e.g. at S. No. 27 to 29 of page V, S. No. 24 to 35 of page VII, S. No. 50 to 53, 55 and 56 of page IX. It was

alleged that these goods were sockets, plugs and jacks and were not liable for concessional rate of duty under Notification No. 67/85. It was also alleged that under the aforesaid notification as well as the Notification No. 232/83 dated 18-8-1983 only 4 types of connectors namely (i) Printed circuit board type; (ii) R/F/AF type; (iii) Circular multipin with treaded or bayonet coupling type and (iv) Rack and Panel type, are eligible for concessional rate of duty whereas the following 3 types, namely (i) flat cable type; (ii) socket for ICs, transistors, diodes etc.; and (iii) Jacks are excluded from the list of items in the heading for connectors. It was stated in the show cause notice that had the intention of the Statute been to grant exemption for all these 7 types of connectors, all the 7 types would have been spelt out in the notification itself as has been e.g. under Notification 74/85 dated 17-3-1985 as amended.

(v) The appellants have submitted forged and locally prepared copies of invoice and packing list alongwith the instant Bill of Entry No. 7058 dated 7-2-1986. In the original copy of the invoice and the packing list (enclosed as Annexure IV to the show cause notice) the description of the goods was quite different from what was given in the importers' copy of the invoice and packing list (enclosed as Annexure III to the show cause notice) submitted alongwith the instant bill of entry. The details of the values given for individual item as seen from the true copy of the invoice No. PC 741062 dated 17-10-1985 (meant for Bill of Entry No. 50872 dated 5-11-1985 mentioned supra) for components for PC/XT are also very different from the values of the individual items given in the importers' copy, submitted with the instant Bill of Entry No. 7058 dated 7-2-1986 e.g. the values of the so called LSICs and connectors have been declared to be US $ 150.00 and US $ 40.00 respectively whereas the value of the same came to only US $ 107.35 for 190 pcs.

of LSI and US $ 23.60 for 91 pcs. of connectors. These values have been deliberately enhanced as the importers were claiming duty concession under Notification No. 67/85. The value of the other items, the allegation goes on, which were subject to a higher rate of duty as is given in the Bill of Entry No. 7058, has correspondingly been reduced so that the total value of the kit could be maintained at the same level of US $215 per set.

In the importers' copy of the packing list, the column for unit price and the total price has not been shown whereas individual values of each and every item are otherwise being given in the copy of the packing list by the suppliers abroad as is evident from Invoice No. PC 741062 dated 17-10-1985, mentioned supra.

(vi) It was also alleged that the importers have claimed the goods under OGL whereas some of the items, namely, resistors, diodes (No. 4148) tantalum capacitors fall under various sub-entries of Appendix 3A(S. No. 607) and the importers were required to produce the import licence for clearance of the same. Allegation was also made for mis-declaring the values of the semi-conductor devices as being different from the prices mentioned in the aforesaid invoice No. PC 741062 dt. 17-10-1985.

(vii) On the basis of the aforesaid facts and circumstances, it was alleged that the appellants had indulged in various sorts of manipulation-forgery, suppression of facts, mis-declaration and wilful mis-statement.

They were, therefore, required to show cause to the Additional Collector as to why the goods be not confiscated under Section 111(d) and under Section 111(m) and (o) of the Customs Act, 1962.

1.2 The adjudicating authority on due adjudication, has held as follows in the impugned order :- (i) As per the ratings of various components such as capacitors, resistors given in the packing list submitted alongwith the bill of entry, these fall under S. Nos. (9), (15) and (1) of Appendix 3A. Similarly Diode No. IN 4148 falls under S. No. (607), (32), (1) (c) of Appendix 3A. There are various other components, namely transistors, ratings of which had not been indicated and no catalogue had been furnished to prove that these fall under OGL.

From the declarations made by the importers/appellants on the bill of entry the adjudicating authority observed that the appellants claimed all the items under OGL Appendix 6 list 8 Pt. I (565). He has also found that on verification of the raw material requirement for the manufacture of PC/XT, these components did not fall under OGL and were, therefore, classifiable under various sub-headings of Appendix 3A of the ITC Policy.

(ii) On comparison of the DOE certificates Nos. 014/85 dated 24-4-1985 and 049/85 dated 24-5-1985 with the office copies of the same collected from the DOE, the adjudicating authority held that the appellants have forged/extrapolated in their own copy such that even ordinary ICs/SSICs/MSICs have been included in their own copy of the certificate and the quantities of the same have also been extrapolated. Thus, he has held that a total number of more than 8 lacs pcs. of Integrated Circuits (IC) other than LSIS have been added on the certificate by the importers/appellants. In the instant case the Appellants paid a total Customs duty of Rs. 1,66,909.50 vide T.R.6-Challan No. 86 under the Self Assessment Procedure laid down under Public Notice No. 3/84 by the Collector of Customs. It is also found that the invoice and the packing list submitted by the appellants are forged and locally prepared. The original copy of the same collected from the bankers of the appellants namely United Commercial Bank, New Delhi is very different from the one submitted by the importers alongwith the bill of entry.

(iii) It has been further held that the appellants have not rebutted the charges indicated in the show cause notice. In their letter dated 8-5-1986 the appellants have only indicated that certain items have been shown under OGL by mistake and they actually fall under Appendix 3A. Therefore, they sought permission to re-export the same.

On the basis of the above findings, the adjudicating authority has held that capacitors, transistors, diodes and battery worth Rs. 12,956.20p falling under Appendix 3A are liable for confiscation under Section 111(d) and (m) and (o) of the Customs Act, 1962. Similarly, the goods worth Rs. 3,63,962/- for ICs and connectors are also liable for confiscation under Section 11 l(m) and (o) of the Customs Act. He further held that since the appellants produced a forged and locally prepared copy of the invoice and packing list, the entire goods worth Rs. 4,11,854/- were otherwise liable for confiscation under Section 111(m) and (o) of the Customs Act, 1962. The adjudicating authority also found the appellants liable for a penalty under Section 112 of the Customs Act for mis-declaration, suppression of facts for submitting forged and manipulated copies of invoice, packing list and DOE certificates leading to evasion of customs duty and violation of ITC provisions.

In view of the aforesaid finding, he confiscated the goods valued at Rs. 12956.20 p falling under Appendix 3A under Section 111(d) and (m) of the Customs Act and he has also confiscated the rest of the goods valued at Rs. 3,98,897.80 p under Section 111(m) and (o), of the Customs Act. The adjudicating authority, however, allowed the appellants to redeem the aforesaid goods on payment of a fine of Rs. 50,000/-in lieu of confiscation. He has also imposed a personal penalty of Rs. 1,25,000/- under Section 112 of the Customs Act.

2. The appellants have now submitted the following in respect of the various allegations :- (i) The suppliers sent one invoice to the bank giving the break-up of price different from the invoice sent alongwith the consignment for similar value of US $ 32,250 but with a different break-up of prices. Normally with foreign parties, especially in Taiwan etc., bulk rates are negotiated, based on a set of components. Neither the Taiwanese company nor the Indian manufacturers are very concerned about the breakup because overall prices are negotiated. If individual components were to be purchased, individual prices could vary between 50 to 60% from the set prices. It is in view of that Taiwanese parties may have sent a different break-up in the invoice along with the consignment than the one sent to the bank, with the overall price of the same remaining the same.

(ii) The appellants had no knowledge of the variation in the Duty Concession certificate as given to the Customs vis-a-vis with the one that was endorsed by the Department of Electronics.

(iii) As soon as the company came to know of the discrepancies the company voluntarily paid the difference of duty as calculated by them and also applied for fresh DOE certificates for the quantities which were imported in excess and got the same issued by the Department of Electronics to cover even those excess quantities imported. The intention of the appellants was, therefore, never to manipulate the certificate though they derived almost no benefit from the same. The mistake of one individual in trying to short-circuit his work and make it easy cannot, therefore, be treated as a major offence on the part of the appellants in trying to evade Customs duty.

(iv) As regards Appendix 3A items, the DGTD was regularly giving import licences for Appendix 3A i.e. all resistors, capacitors and other semi-conductor devices. The appellants have got earlier other items and even presently they are getting similar Appendix 3A items for import licence. It was the mistake of one individual in not applying for the same. Hence, it should not be treated as wilful manipulation to evade import policy.

(v) In any event confiscation under Section 111(o) is illegal.

Section 111 (o) applies only to post clearances violation. Once confiscation under Section 111(o) is bad, the proportionate redemption fine and penalty may be set aside.

(vi) The question of confiscation under Section 111 (m) cannot also arise. The assessable value is something for the officers to redetermine under Section 14. If the value which the officer decides is different from that of the one declared by the asses-see, that does not imply that goods should be confiscated under Section 111(m). The confiscation under Section 111(d) is also illegal and without jurisdiction.

(vii) In any event the redemption fine imposed is excessive, illegal and without jurisdiction. It is contrary to the provisions of Section 125 of the Customs Act, 1962.

(viii) The amount of penalty imposed is arbitrary, oppressive and without jurisdiction. There also exists no justifiable reason for imposing such harsh penalty.

3. Elaborating on the aforesaid pleas taken in the appeal memorandum, the learned advocate Shri A.K. Jain and later on Shri M.Chandrasekharan, the learned advocate stated that the DOE certificate relied upon by the department as forged/manipulated was not enclosed with the bill of entry. In the absence of any evidence of enclosure of the DOE certificate with the bill of entry no adverse inference can be drawn against the appellants regarding the intention to evade duty or by mis-declaring the quantity of the goods. Shri Jain further submitted that

DOE certificate No. 014/85 had already come under scrutiny by the Tribunal in another case of the appellants reported in 1988 (16) ECR 23 and the Tribunal came to a finding that DOE certificates could not be said to have been forged/manipulated by the appellants. The learned advocate has, therefore, submitted that the same ratio as in 1988 (16) ECR 23 would apply so far as the DOE certificates are concerned.

4. Learned JDR appearing for the Revenue has pointed out that the show cause notice has made detailed allegations and the findings of the adjudicating authority in the impugned order are based on the allegations made in that show cause notice. He submits that it has not been denied that the appellants have furnished a copy of an invoice which is not genuine. They are merely making an excuse now that this is a copy which they got from the suppliers and that is why he submitted that it does not stand to reason that when an invoice for exactly identical goods for another consignment gives detailed break-up of values of various components, the invoice in the instant case would not provide such a detailed break-up of the various components comprising the machine imported under the present bill of entry. As regards the plea of non-submission of the certificate 014 relating to exemption Notification No. 67/85, the learned DR has submitted that the instant Bill of Entry No. 7058 clearly stipulated availment of Notification 67/85 i dated 17-3-1985. That notification, he submits, is dependent only on the sole condition that an officer not lower in rank than a Joint Director in the Department of Electronics of the Government is satisfied that the goods mentioned in the table to the said notifica- tion are required for the purpose of manufacture of computers and computer peripheral devices. Therefore, it is too naive for the appellants to say that they did not furnish the certificate 014/85. The learned DR submitted that even if the certificate 014/85 was not actually submitted inference is inescapable that that certificate was intended to be submitted by the appellants inasmuch as the appellants have not come up with any other certificate which covered the imported goods in question. From these circumstances, he submits that it is apparent that the appellants had a clear intention to evade duty by mis-declaring the goods and on the strength of manipulated entries in their own copy of the certificate. He has also submitted that the Tribunal's judgment reported in 1988 (16) ECR 23 relied upon by the appellants is of no help so far as the facts and circumstances of this

case are concerned. His submission is that there is no res judicata applicable in taxation matters. Further there are material points of distinction between the facts of this case and the facts of the case before the Tribunal reported in 1988 (16) ECR 23. Distinction lies in the fact that in the present case invoice and the packing list are forged i in this case, as already stated above. Values of various components have been wrongly declared on the basis of the forged invoice and packing as already submitted by him. Further he has submitted that differential duty was paid by the appellants on their own in the 1988 case, mentioned supra whereas duty has been paid after adjudication in the instant case. For the proposition that there is no res judicata in the taxation matters, learned DR, has relied upon a decision of the Delhi High Court in the case of Jain Export Private Ltd. [1987 (29) ELT 753-Del.- Paras 49 to 52].

4.1 Learned DR for the Revenue also made a plea that while the benefit of concessional duty is available only on large scale integrated circuits (LSICs), the importers imported a number of ordinary ICs/medium scale ICs/large scale ICs vide the instant bill of entry on which the benefit of Customs duty is otherwise not available at all.

The relevant catalogue of ICs other than LSICs from M/s. Fair Child Semi-Conductors as obtained from TTL Data Book has been enclosed at pages 82-88 of the Paper Book. He drew attention to the introduction of the said Data Book at page 82 stating as follows :- "This TTL Data Book is a complete reference source for all Fair Child Semi-Conductor SSI/MSI/TTL Products." 4.2 Learned DR, has, therefore, urged that the impugned order is correct in law and in the facts and circumstances of this case the appeal deserves to be rejected.

5. We have carefully considered the pleas advanced on both sides. We shall deal with the various pleas as seriatim below :- (1) As regards the allegations that the appellants submitted a manipulated copy of the invoice and the packing list with the Bill of Entry No. 7058 which is under consideration and not the correct invoice and packing list, we are of the view that the allegations made by the department are correct in the facts and circumstances in the instant case. When the importers/appellants are getting a detailed break-up of the values of the goods

comprising components of computers and computer peripheral devices, they have to give separate prices for each component because the rate of duty is different for different components. It is apparent from the bill of entry itself that there are two different rates - one under Notification No. 67/85 and another under Notification No. 232/83 which the appellants themselves claimed in the bill of entry. It was, therefore, incumbent upon them to get the detailed break-up of prices and declare the same to the Customs. If they had obtained such a break-up for another consignment, there is no reason as to why they did not obtain in the normal course of things for this consignment a similar break-up and the prices declared by them for the purpose of Customs duty. Therefore, there was a clear mis-declaration on their part with an intention to evade payment of duty.

(2) As regards the plea that certificate 014/85 was never submitted by them, we find that this plea is also merely an afterthought. We have gone through the Notification No. 67/85 and we find that the only condition under which the said notification provided for concessional rate of duty was upon production of certificate by the competent officer in the Department of Electronics. The fact that they had claimed the benefit of Notification No. 67/85 in respect of part of the consignment under Bill of Entry No. 7058 shows that they had a certificate which gave such a benefit to them. The only certificate available with them for this purpose was 014/85 as there is no such case that the appellants had ever submitted any other certificate which could give them the benefit of Notification No. 67/85 as claimed in the Bill of Entry No. 7058. Since only one copy of the certificate is available with the importers/appellants it is generally the practice that their certificate is tagged with another bill of entry and only at the time of debit of the quantity/value in the certificate, that certificate is normally presented with the bill of entry; otherwise normally it is not done so. In the overall facts and circumstances available in this case, we are of the view that it was clearly an afterthought on the part of the appellants to contend that they never submitted certificate No. 014/85 with the Bill of Entry No. 7058. Looking to the copy of the certificate No. 014/85 and comparing it with the original copy obtained from the Department of Electronics it is clear that large scale manipulations have been done in the copy of the certificate 014/85 available with the appellants. Some of those manipulated entries have a direct bearing on the availability of concessional

rate of duty under Notification 67/85 in respect of the goods imported under this consignment vide Bill of Entry No. 7058. Tribunal's decision reported in 1988 (16) ECR 23 relied upon by the appellants is distinguishable on this aspect inasmuch as the only entry which was relevant for the purpose of that case before the Tribunal was without any manipulation as is apparent from para 8 of the said Report, relevant extract from which reads as follows :- "As we have discussed earlier, the subject imported goods appear at S. No. 1 of the DOE Certificate alleged to be filed by the appellants) which appears on page 10 and 20 of the paper book.

Annexure to the DOE Certificate on page 10 is the alleged DOE Certificate filed by the appellant alongwith the other Bill of Entry and on page 20 is the annexure to the DOE Certificate obtained by the Department from the office of the Department of Electronics. So far as this item at S. No. 1 is concerned, there is no interpolation. The only difficulty is that the appellant should have imported 15,000 pieces whereas he has imported 20,000 pieces . in the present consignment. Apparently there appears to be importation of 5,000 pieces." But such circumstance does not exist in the present case. As already held, some of the entries in the DOE certificate as available with the appellants have direct bearing on the duty which do not tally with the original certificate obtained from DOE. It is not the appellants' case that the copy of the certificate obtained from the DOE by the Revenue is not genuine. Both the copies - one obtained from the DOE and the other available with the appellants should be the same in all respects. The appellants are expected to submit two copies to the DOE one of which is returned by the DOE with their certificate and seal. If the copy of the certificate available with the appellants does not tally with the office copy of the certificate available with the DOE, reasonable inference is that the appellants have manipulated the copy available with them because the appellants are the interested beneficiary of the manipulation and the manipulated copy is in their control. If there is a difference between their copy and the copy available with the DOE, appellants and the appellants alone have the burden to prove that the copy available with them is genuine which they have failed to prove.

Therefore, we are of the view that the decision of the Tribunal does not help the appellants. We find that there was a clear intention on the part of the appellants to claim the benefit of Notification No. 67/85 on the strength of manipulated certificate 014/85. But for the detection by the department, the appellants would have succeeded in their nefarious design.

(3) As regards the ITC angle of some of the goods we find from the pleas of the appellants that they have not seriously contested the allegation that the goods fall under Appendix 3A and therefore, require a licence. The appellants have merely stated that DGTD was regularly giving import licences for Appendix 3A items i.e.

resistors, capacitors and other semi-conductor devices. The appellants had got even earlier other items and even presently they were getting Appendix 3A items for import licence. He has further submitted that it was the mistake of one individual in not applying for the import licence. Hence they have urged that this lapse should not be treated as a wilful manipulation to evade Import Policy.

While it may be true that the appellants would have got the necessary import licence for Appendix 3A items had they applied for it, the fact remains that in the present consignment the goods are without a valid import licence. The plea of the appellants is itself a clear admission of that. Therefore, the goods have been rightly held to be liable to confiscation under Section 111(d).

(4) As regards the plea that the provisions of Section 111(o) have not been correctly invoked by the adjudicating authority inasmuch as they are not at all attracted in the instant case, we are inclined to agree with the appellants. As pointed out by them the provisions of Section 111(o) are attracted only for violation of any post importation condition whether relating to any prohibition on import or relating to any exemption from any duty. We are not inclined to accept their further plea that a suitable reduction in fine for non-attraction of Section 111(o) be made inasmuch as we feel that the adjudicating authority has already taken a fairly lenient view in imposing a fine only of Rs. 50,000/-against the confiscation of goods worth over Rs. 4 lakhs.

6. The adjudication order, therefore, is correct in law and in the facts and circumstances of this case. We, therefore, find no reason to interfere with the impugned order. Accordingly, the appeal is rejected.

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