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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-10-1991

Reported in : (1992)(57)ELT184TriDel

Appellant : Avi Autos

Respondent : Collector of Customs

Judgement :
1. This appeal is directed against the order dated 16-3-1990 passed by the Collector of Customs (Appeals), Bombay by which he had upheld the order dated 4-4-1989 passed by the Deputy Collector of Customs, Group 2 B, New Customs House, Bombay. The facts, in brief, are that the appeallants, herein, imported a consignment of tyre, tube and flap sets for which they filed a Bill of Entry on February,1989 and claimed the clearance against the entry at Sl. No. 46 of Appendix 6 of Import Policy 1988-91 and also claimed exemption under Notifications 185/88 and 342/76, dated 26-5-1988 and 2-8-1976 respectively. Entry 46 of Appendix 6 1988-91 Import Policy contains a list of various categories of importers who can import goods under an Open General Licence against the above-mentioned entry. The relevant entry for the purpose of this case is the category at (d), which is "Association of owners of vehicles in which the tyres are used and approved as such by the Department of Industrial Development of the Government of India." The Deputy Collector was of the view that the appellants, herein, were not covered by the Entry, and also held that they cannot act as agents in terms of para 121(2) of the Handbook of Import Policy April-March 1988-

91 as they are not covered by the categories of agents specified therein, who can act as agents. He also held that the appellants cannot sell the goods on high seas basis in terms of para 5(3)(ii) of Import Control Order, 1955. The exemption under Notifications 342/76 and 185/88 was also held to be ineligible as the goods, imported, were not tractor tyres for the purpose Notification 342/76 and the eligibility to another Notification 185/88 was barred as the import, according to the Deputy Collector, was not, by any of the categories of the importers, eligible to get the benefit of this Notification. The proceedings were, therefore, initiated in which the appellants, herein, waived the issue of a format show cause notice by their letter dated 13-3-1989 and explained their case before the adjudicating authority during personal hearing and written submissions dated 28-3-1989. It was their case that the All India Motor Transport Congress is an apex body of private bus and truck operators in the country and it was at their instance that the Government of India had issued the exemption Notification 185/88. The AIMTC, according to them, was covered by Item No. (d) of the Table to the Notification 185/88, as eligible importers.

This item covers Association of owners of vehicles in which the said tyres are used and approved as such by the Department of Industrial Development of the Government of India in accordance with the scheme framed by them in this behalf. It was also submitted that the appellants were their authorised agents and could, therefore, lawfully import the goods. The Deputy Collector, however, held that the appellants and not the AIMTC, in whose name the Bill of Entry has been filed, are the real importers and that the appellants are not entitled to the exemption as also for the import under OGL. He pointed out that AIMTC is not Association of actual users recognised by the concerned State Director of Industries. Hence para 121(2) of the Handbook of Procedure for Import Policy will not apply. He pointed out that the list mentioned in clause (i) to (v) of para 121(2) of the Handbook, mentions agents and not eligible importers. The Deputy Collector, therefore, confiscated the goods under Section lll(d) of the Customs Act, 1962 levying a fine, in lieu of confiscation, of Rs. 1,80,000/-.

The order of the Deputy Collector was upheld by the Collector of Customs (Appeals), Bombay in the impugned order except for the modification of reducing the redemption fine to Rs. one lakh. The present appeal is against this order.

2. Sh. J.S. Sinha, Ld. Counsel appearing for the appellants, contended that the appellants were importing the goods as agents of the AIMTC and hold a letter of authority from them. AIMTC is duly registered and are eligible importers in terms of Notification 185/88. They had applied for sanction of import of tyres vide Government of India, Ministry of Industries Letter dated 20-12-1988. Thereafter, in terms of para 121 (ii)(iv) of the Handbook of Import Policy, they issued a letter of authority dated 22-12-1988 to the appellants. It was submitted that AIMTC are eligible importers, who have legally authorised the appellants to import the tyres in accordance with the Notification 185/88. It was also submitted that the Collector, at one point in his order, had observed that the appellants were not reaping the benefit of exemption and in such a view should not have imposed any redemption fine. It was further pointed out that the appellants had already applied for obtaining DGTD Certificate on 30-12-1988 and the goods were being cleared only after ascertaining from the Department that the contract was duly registered. Therefore, they were eligible for exemption under Notification 185/88. As agents of the AIMTC in terms of para 121(2)(iv), the appellants could open a Letter of Credit on behalf of the Association by whom they were authorised to act as agents. This aspect has been omitted to be considered in the order of the Collector (Appeals). It is also not the case of the Department that the goods have been mis-used. The redemption fine on the goods is unjustified for which the Ld. Counsel cited the case of Collector of Customs v. Seth EnterprisesAkbar Badmddin Jiwani v.Collector of Customs 3. Sh. Narasimha Murthy, the Ld. D.R., contended that if the appellants' stand is that they are the agents of an importer then they are straightaway ineligible for the exemption under Notification 185/88 under category (d) of the Table II of the Notification under which the eligible importers are Association of owners of vehicles only. It will not cover agents of such Associations nor is it the case of the appellants that they are themselves such an Association. As regards the provisions regarding agents in para 121(2) of the Handbook of Import Policy, the Ld. D.R. urged that the AIMTC, itself, is an agent of its constituent members and it cannot, in its turn, have another agent.

Therefore, the import is not covered by OGL nor is eligible for exemption under Notification 185/88 and it was, further, submitted by the Ld. D.R. that once the import is not covered by valid licence, the confiscation of the goods and levy of fine in lieu of confiscation is correct in law. He, further, pointed out that relief in the quantum of redemption fine has already been given by the Collector (Appeals).

4. The submissions made by the parties, herein, have been carefully considered. The question is whether the import of nylon tyres, tubes and flap sets is eligible for import under OGL Appendix 6 Item No. 46 of Import Policy 1988-91; the related question whether the goods are eligible for exemption under Notification 185/88 also arises for determination. As has been extracted above already, the category of eligible importers under OGL, relevant to the case, is Association of owners of vehicles in which the said tyres are used and approved as such by the Department of Industrial Development of the Government of India in accordance with the scheme framed by them. AIMTC had duly been registered by the Department of Industrial Development as evident by a letter dated 20-12-1988 from that Department to AIMTC which is the Ministry's letter of approval of AIMTC for import of specified categories of bus and truck tyres in terms of Notification 185/88.

There is also a direction in the approval letter to register any contract for the import of tyres under the Notification with the DGTD.AIMTC, as per the records, on 22-12-1988, issued a letter of authority to the appellants appointing them as Letter of Authority holders to import on their behalf, the tyres, which is the subject-matter of the present consignment in dispute. The Bill of Entry for the clearance of the tyres, a photo copy of which is available on record, shows that it is in the name of AIMTC which has been circled and the name of the appellants written by the side, and it is not clear from the records whether the name of the importer, was amended as per law after the Bill of Entry was filed, although there is an observation by the Deputy Collector in his order although the Bill of Entry is filed in the name of AIMTC, the real importers are the appellants. The appellants' claim is that by virtue of the letter of authority from AIMTC, they can import the goods under OGL as agents of AIMTC in terms of para 121(ii) of the Import Policy Handbook. Para 121(1) of the Handbook says that a person effecting imports under an Open General Licence may utilise the service of an agent only for the purpose of placing an order arranging movement or clearing the goods through Customs, but not for effecting remittances or opening letters of credit, etc. Sub-para (2), however, says that in the following cases, the agents can also open letters of credit and make remittances on behalf of eligible importers and one such category at sub-para (iv) is Co-operative Societies or Associations of Actual Users recognised by the concerned State Director of Industries and importing goods on behalf of their members. A careful reading of this provision would show that such Co-operative Societies and Associations of Actual Users acting as agents importing goods on behalf of their members can open letter of credit and make remittances.

Such is not the case on facts in the case of the present import by the appellants. The provisions of para 121(2)(iv), would be attracted if AIMTC was acting on behalf of its constituent members as their agent.

Another aspect, which would make this claim of the appellants untenable, is that such Co-operative Societies or Associations of Actual Users should be those recognised by the concerned State Director of Industries. No evidence has been produced that such recognition by the concerned State Director of Industries is in existence in respect of the appellants or AIMTC. Therefore, the conclusion of the Deputy Collector that the Associations which are, themselves, agents cannot give letter of authority to another person, has a lot of force. The second issue is regarding eligibility to exemption under Notification 185/88. This Notification exempts nylon tyres of the specification mentioned in Table I thereof falling with the Chapter 40 of the CTA '75, when imported into India by an importer mentioned in Table II to this Notification, from so much of that portion of the duty of customs leviable thereon under CTA as is in excess of the amount calculated at the rate of 60% ad valorem, subject to condition, inter alia, that the importer, at the time of importation, shall produce a certificate from an officer not below the rank of a Joint Secretary to the Government in the Department of Industrial Development to the effect that the importer falls under the concerned item. We have already seen that the relevant category of importer is at No. (d) of Table II of the Notification which covers Association of owners of vehicles in which the said tyres are used and approved as such by the Department of Industrial Development in accordance with the scheme framed by them in this behalf. From the records, it is seen that the approval under this scheme from the Department of Industries, has been given to AIMTC. The appellants, M/s. Avi Autos, do not possess such a certificate. It is also not shown whether the certificate from an officer, not below the rank of Joint Secretary in the Department of Industrial Development in the name of the appellants, had been produced. In the absence of such documentary evidence, the exemption, which clearly covers only Association of owners of vehicles, as eligible importers, when the importer is not, in fact, such an Association, and also in the absence of the certificate, as mentioned above, from the Department of Industrial Development at the time of importation the exemption under the Notification cannot be extended to the goods imported. In such a view of the matter, the order of the lower authorities holding that the import is unauthorised, and that the goods are ineligible for the exemption under Notification 185/88, is well-founded and is upheld. As regards the quantum of redemption fine, the Collector (Appeals), has already given sufficient relief and in such circumstances, there is no reason to interfere with the order passed by the lower authorities. The appeal is rejected.