

Continental Eastern Agencies Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-02-1994

Reported in : (1994)(72)ELT277TriDel

Appellant : Continental Eastern Agencies

Respondent : Collector of Customs

Judgement :

1. The above appeal arises out of the order of the Collector (Appeals), New Delhi upholding the order of the Assistant Collector classifying the items imported viz. Techo Generator and Electric Fagon Box under Heading 98.06 CTA, 1975 with the benefit of Notification 68/87 and confiscating the same for unauthorised importation without requisite import licence with option to redeem on payment of a fine.

2. The brief facts of the case are that the appellants imported a consignment from Italy and cleared the goods as (1) lifting screws, (2) gear and gear worms (3) Techo Generator and (4) Electric Fagon box. The case was adjudicated for non-production of import licence for items 3 and 4 and the importer went up in appeal to the Collector (Appeals) against the adjudication order and the matter was remanded for de novo consideration to the Assistant Collector (Imports). A fresh show cause notice was issued to the importer on 2-8-1988 on the following grounds: "On examination techometers were found as motor which appears on App. 3A Sl. No. 450(1) of ITC 1985-88. So importation of such items become unauthorised in absence of valid import licence.

Classification of motor is 85.01.

From catalogue and parry's declaration on face of B/E, electric fagon box is part of machine tool. Hence classifiable under 98.08.

The item consist of mounted PCB. So it falls under App 2B SI. No. 124 and importation of such items becomes unauthorised in absence of valid import licence.

Gear worm and gear are classifiable under 84.33 in terms of Notification No. 132/82.

According to the importer techo generator and the electric fagon box were spare parts of machine tools and hence cleared under OGL Appendix 6 vide Item No. 46(2) of 1985-88 Policy. The importer submitted that techo generator is designed and used for varying the speed of work head motor for hydraulic crank shaft grinding machine and electric fagon box is feed back element, and both fall under OGL, Appendix 6, list 6 Part I, SI. No. 546 (VII) - 37. The importers also claimed the benefit of Notification 156/86 dated 1-3-1986 in terms of SI. No. 4 thereof. The Assistant Collector classified the techo generator as a motor falling under Appendix 3A Item No. 450(1) of the relevant Import Policy and electric fagon box was considered to be a mounted PCB falling under Entry 124 Appendix 2(b) of the Import Policy. The benefit of the notification claimed by the importer was not extended on the ground that it was available only to components which are used by manufacturers of machine tools. The lower appellate authority having upheld the order of the Assistant Collector, the appellants have filed the present appeal.

3. We have heard Shri A.C. Jain, learned Advocate and Smt. J.M.S.Sundaram, learned SDR, and carefully considered their submissions.

5. We find that the Techo Generator was described in the Bill of Entry as "Techometer Rowan" and then re-written as "Techo Generator Rowan".

No catalogue has been furnished for these goods to substantiate the importer's contention that the said techometer was in fact a techo generator and on the other hand the Customs Examination Report countersigned by the Assistant Collector

describes the goods as Techomotor. The importers have also neither given any explanation for the reason why the invoice describes the item as techo-meter nor have they obtained any clarification from the supplier. The wiring diagram of the whole machine also nowhere mentions this item as a techo generator. Therefore, in the absence of any acceptable evidence in the form of catalogue, etc., we see no reason to interfere with the finding of the authorities below that the item falls under Appendix 3A SI. No.450(1) of the 1985-88 Import Policy and requires to be imported under a Licence.

6. No catalogue has been produced for the other item viz. Electric Fagon Box also. The wiring diagram of the machine and its manual nowhere gives the description of this item. The examination of this item reveals that it contained various electric items and mounted PCBs.

The lower appellate authority has recorded that the importers' contention that this Electric Fagon Box is an equipment for stepless motor RPM control is based solely upon the fact that they have given a photocopy of the catalogue "equipment for step-less motor RPM control." However, the importers have not been able to co-relate the said catalogue with the imported goods which are described differently and bear a specific code No. Even before us the importers have not succeeded in co-relating the catalogue with this item. Therefore, we agree with the findings of the authorities below that the Electric Fagon Box falls under Appendix 2(B) SI. No. 124, requiring to be imported under Licence which has not been produced.

7. In the result we uphold the impugned order and reject the appeal.

Sd/- With due respect to Hon'ble Member Qudicial) my views and orders in the matter are as follows :-- 8. I observe that one and the same item has been described in three different ways namely the following :- 9. Normally meters, generators and motors are different and distinguishable items which are intended to serve different purposes.

10. However, from the very beginning these three terms appear to have been used by both the sides, rather loosely.

11. The item which has been described as Tachogenerator in the bill of entry has been described as tachometer in the invoice. This was required to be clarified at the time of clearance. But apparently no catalogue was produced at that stage. Further in the examination report on the reverse of bill of entry, the officers have used all the three terms while describing the item. And different officers have described it differently on different dates as clearly brought out by the Hon'ble Member (Judicial) at page 3 of her order.

12. The adjudicating officer should have sorted it out before passing the order as apparently classification as well as application of Policy depends upon correct identification and proper description.

13. The appellants have filed circuit diagram, extracts of HSN and extracts of technical material, extracts from a book "Computer Control of Manufacturing Systems" by Yoram Koren and the Book "Control of Electric Machine by Irwing L. Kosow also the manual of Tachogenerator by M/s. Advani Oerlikon Ltd. and the Book "NC Machine Control Systems" by Roger S. Pressman.

14. It appears from the perusal of this material that the appellants are right in pointing out that "In order to obtain a precise control of the servomotor speed, the actual speed must be measured and compared with the required one.

The actual speed may be measured in terms of voltage by a small PM de generator, or tachometer, coupled to the motor shaft." (Extracts from 'Computer Control of Manufacturing Systems' by Yoram Koren).

15. The extracts from "Packaged Thyristor DC Convectore (Ador mini speedmaster)" refers to the instrument namely the mini speedmaster and indicates that it has optional features like acceleration control, "tachnogenerator feedback" in the form of plug in PCB modules, etc." The specification of weight mentioned by the appellant in his letter addressed to the Collector (Appeals) does not exactly match with the description of weight in the typed extract from manual of a 'Rotary Machines Division - Oerlikon Limited, Pune, which refers to operation and maintenance of tachogenerator and describes it as "a permanent magnet type DC generator" which could "also be used as speed indicator". But it does show a dual

function and refers to "feed back" suitable for a "high impedance electronic circuit".

16. The extracts from HSN also show that Heading 90.32. refers to "automatic regulators" including electronic regulators and mentions that "these regulators are used not only for electrical quantities such as ... but also for other quantities such as revolution per minute ...

".

17. In Chapter 10 of the Book 'Automatic Feedback Control Systems' it is mentioned inter alia regarding "Tachometer-generator damping. Shown in Fig. 10-3a" that "a velocity signal may be obtained from a tachometer generator coupled to the output shaft of the actuator." 18. It is also mentioned under the heading Elements of the NC system -position of velocity Feedback "The output of the first control amplifier is modified by feedback from a velocity transducer. Velocity feedback is general provided by an AC or DC tachometer coupled to the servomotor. Unlike the position transducer which outputs a digital pulse signal, the tachometer generates an analog voltage that is compared with the analog signal of the first control amplifier. Coupled with the second control amplifier the velocity loop feedback essentially magnifies the gain for the input to the power amplifier." 19. Apart from the technical material submitted by the appellant, I find that McGraw Hill's Book on Scientific and Technical Terms, Second Edition, defines tachometer as "the instrument that measures the revolutions per minute or the angular speed of rotating shaft." 20. From the above, it is clear that the appellant is correct in his submission that it is an item which is coupled to the motor shaft to measure and regulate the motor speed.

21. This shows that it has been wrongly treated by the lower authorities as motor and the matter is required to be re-examined treating it as a part of motorised speed regulator functioning along with the fagon box.

22. It may be mentioned that there is no reason to doubt the applicant's submission that technogenerator and fagon boxes are parts of feedback system which automatically works in harmony to maintain the consistency of revolutions per minute and that the techogenerator provides signals to the fagon box which

controls the speedless RPM servomotor, in view of the technical material submitted by them including sketches and diagram of circuits showing their use annexed herewith (Annexures I, II, III & IV not printed).

23. In view of the above position the departmental authorities have gone wrong in identification of the items in question and in understanding their main function and use. The appellant's case is, therefore, required to be re-examined treating them as elements of a control system and taking note including of the fact that Diodes and Triodes are normally used in electronic circuits.

24. Since the HSN, Customs Classification and ITC Schedule have been harmonised, the appellant's contention that Department was required to treat them at par for the purpose of two Acts also gains importance and any departure therefrom was required to be justified.

25. The orders of the lower authorities are indeed vague and self-contradictory and have been passed without taking the relevant technical material into account.

26. Since the application of Import Policy depends inter alia upon correct description and proper identification and right understanding of their main function and use and then classifying them correctly, the matter is required to be re-examined keeping in view the observations and findings recorded above.

27. I, therefore, set aside the impugned order and remand the matter to the Asstt. Collector for re-adjudication in accordance with the law with the direction that the appellants may be heard before the orders are finally passed.

In view of the difference of opinion between Hon'ble Member (Judicial) and the Vice President, the matter is submitted to the Hon'ble President for reference to a third Member on the following point :- "Whether the appeal should be rejected as unsubstantiated or it should be remanded for de novo consideration." 28. This issue has been referred to me as an item of difference of opinion. The appeal was considered by the Bench and the two Members constituting the Bench gave different views. The issue involved in this case which has been referred to me is "Whether the appeal should be rejected as unsubstantiated or it should be

remanded for de novo consideration." 29. S/Shri V.P. Verma and Lachchman Verma, partners of the appellant firm appeared for the appellant and Shri M.K. Jain, the Id. SDR for the respondent. After submitting their arguments more or less on the lines as indicated in the order of the Vice President except on the point of remand, the appellant submitted that adequate evidence was produced before the lower authorities and therefore there was no question of remand of the case again to the lower authorities but submitted that on the basis of the evidence already submitted in support of their contentions the impugned order passed by the lower authorities should be set aside and consequential relief should be given to them. Shri M.K. Jain, the Id. SDR submitted that the Member (Judicial) has rightly held that the appellant could not produce the catalogue for the items in dispute and therefore their contention remained unsubstantiated and prayed that the order passed by the Member (Judicial) may be concurred with.

30. The appellants in support of their oral arguments also made written submissions. In the written submissions on the findings of Member (Judicial) that Techogenerator was described in the Bill of Entry as "Techometer Rowan" and then re-written as "Techo Generator Rowan" and no catalogue has been furnished for these goods to substantiate the importer's contention that the said Techometer was in fact a Techo Generator, the appellants contested that they had substantiated the case by co-relating the items by furnishing copy of their Telex order to the manufacturer, the catalogue of the machine, Instruction-cum-Spare parts manual of the machine, Electrical Circuit Diagram of the machine, Explanation with the help of HSN, catalogue of the similar items of Indian Manufacturer and explanation with the help of McGraw Hill Dictionary of Mechanical and Design Engineering etc. On the question of remanding their case for de novo adjudication, the appellants submitted that all the documents, information etc. were already available with the lower authorities; that the Collector (Appeals) had already sent the case for de novo adjudication. While supporting the technical view taken by the Hon'ble Vice President, the appellant submitted that no useful purpose will be served by again remanding the case and prayed that the impugned order may be set aside and consequential relief may be granted to them.

31. Heard the submissions oral as well as written of both sides and considered them. From the records and submissions made by the appellant, I find that all the records examined by the Hon'ble Vice President were placed before the lower authorities and the issues were taken up at the time of personal hearing before the lower authorities as well. After examining all those documents, the lower authorities rendered the finding against the appellant. I am, therefore, of the view that there is no case for remand to lower authorities.

32. I find that it is amply clear that the catalogue of the parts in dispute was never produced by the appellant. Whatever documents or diagrams they produced were incomplete and did not fully support their contention made during the course of personal hearing. Having regard to these facts and the detailed examination of the contentions by the Id.Member (J), I am inclined to agree with the order proposed by the Ld.

Member.

In view of the majority opinion the appeal is dismissed.

Sd/- Sd/-Dated : 2-6-1994 Member (J) Vice Pesident

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