Oriental Machine Tools Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-01-1994

Reported in : (1995)LC170Tri(Mum.)bai

Appellant : Oriental Machine Tools

Respondent : Collector of Customs

Judgement :
1. This is an appeal against the Order-in-Appeal No. 3717/87-BCH, dated 30-8-1987.

2. The facts of the case are that the appellants, who are letter of authority holders on behalf of Sri Ram Filteration & Eng. Co. imported a consignment of Gear shape cutters and Hob cutters. They produced import licence which are valid for import of Appendix 3 items with Actual User condition. Such items which are necessary for the production of product manufactured by the Actual User are permitted import under the provisions of Para 31(2) of the Policy AM 84. However, the deptt. objected to their clearance on the ground that the goods are gear shape cutters and hob cutters and they are used on a specific type of machine and these are normally used by gear manufacturers. The line of manufacturers of the licence holder is wire netting, industrial fitters, sieves, etc. and hence these items are not needed for the manufacture of the final products manufactured by the licence holder and in that view, adjudication proceedings were held by the Dy.

Collector of Customs, Bombay. The goods were ordered confiscation but allowed redemption on payment of fine of Rs. 90,000/-. The appeal against this order was also rejected by the Collector (A) and hence the present appeal before the Tribunal.

3. Shri J.C. Patel, the ld. advocate pleads that the authorities below have gone by mis-conception that these gear shape cutters and hob cutters are only needed by gear manufacturers. He refers to the McGraw-Hill Dictionary of Scientific and Technical terms to point out that gear cutting means cutting or forming of a uniform series of tooth-like projections on the surface of a work piece. It is not restricted to only gear manufacture. Wherever a workpiece is to be subjected to uniform series of tooth like projections on the surface, gear cutter is needed. Likewise, in the case of hob cutters, the aforesaid dictionary indicates cutting evently spaced forms, such as gear teeth, on the periphery of cylindrical workpiece." The same position would hold good for hob cutters also. Hence it is not correct to construe that gear shape cutters and hob cutters are needed only by gear manufacturers. He also refers to the certificate issued by an independent engineer to show that the items imported find use in the factories, which manufacture wire netting, Industrial filters, Sieves and Per forated sheets. These Gear shaping cutters and hob cutters are used to produce dies and fixtures and thus these dies and fixtures are required for the manufacture of wire netting etc. He also produced a copy of letter from the licence holders to confirm the receipt of the consignment and their actual utilisation for making dies and fixtures, which are used in turn in the manufacture of wire netting etc.

4. Shri Singh, the ld. JDR however contends that these cannot be used in this industry.

5. I find that the appellant has produced independent Engineer's certificate indicating clearly that these cutters are used for making dies and fixtures in the wire netting industry and this evidence has not been rebutted by any other evidence to the country in the form of any certificate from any independent Chartered Engineer. No expert opinion seems to have been obtained. Be that as it may, the McGraw Hill Dictionary also clearly indicate that these equipments need

not be confined only to gear manufacturers; wherever any work piece is to be cut uniformly for providing teeth like projections on the surface, these cutters are needed. In the circumstances, when it is confirmed by the licence holder that he has received these goods after clearance and they have been put to such use and in the absence of any contrary evidence to the effect that such cutters imported cannot be used at all in the wire netting industry, I am to extend the benefit and allow this appeal with consequential relief.