

Indian Communications Network Vs. Collr. of Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-28-1994

Reported in : (1994)(74)ELT948TriDel

Appellant : Indian Communications Network

Respondent : Collr. of Cus.

Judgement :

1. M/s. Indian Communication Network have filed this appeal against the order of Additional Collector. The Addl. Collector in his order had held : "I order that goods described as 'ribbons' in the Bill of Entry, while in invoice as 'Pancakes' valued at Rs. 4,18,910/- be confiscated under Section 111(d) of the Customs Act. However, I permit the importer to redeem the goods on payment of Rs. 2,00,000/- (Rupees two lakhs only). I impose a personal penalty of Rs. 10,000/- on the importer under Section 112(a) of the Customs Act." 2. Briefly stated the facts of the case are that the appellant filed Bill of Entry No. 211000 dated 27-2-1990 seeking clearance of the goods described as ribbons for electronic typewriter under OGL Appendix 6(1).

On examination, the goods were found to be ribbons for typewriters. The department was of the view that typewriter ribbons are restricted items for import as they were covered by S. No. 118 of Appendix 2(b) of the Import and Export Policy 1988-91. It was also alleged that the goods were not permitted under OGL and therefore the import was considered as invalid as no licence for import thereof was produced. Accordingly the goods were seized and a show cause notice was issued to the appellant that the import was without a valid import licence and that

the goods were liable to confiscation and that the importers were liable to a penalty.

3. Shri N.C. Sogani, the Id. Consultant appearing for the appellant submitted that the Dy. Chief Controller of Imports and Exports vide his letter dated 26-8-1985 had clarified that ribbon/ribbon cartridges were covered by S. No. 1 of Appendix of the Import and Export Policy 1985-88 (Vol. I) and that the Import can be made by the Actual Users (Industrial) subject to the conditions laid down. The Id. Consultant also referred to Public Notice No. 44/ITC(PN)785-88 dated 18-10-1985 in which it was stated : "After the existing Entry No. 46 the following new entry shall be added : that the Industrial Adviser in the office of the Director General, Technical Development (DGTD) under their letter dated 24-6-1985 had intimated to the appellants that the matter in regard to inclusion of print cartridges, ribbon cartridges and correction tape in the stock and sale list of Import Policy has been considered by their office and that their recommendations alongwith the letter of the appellant in original has been sent to the office of CCI & E for necessary action; that on the strength of this recommendation the CCI & E had included the item in Appendix 6 List 8 Part HI; that the clarification given by the CCI & E and the inclusion of the items under Appendix 6 during the Import and Export Policy period 1985-88 should be applicable to similar imports during the policy period 1988-91. It was argued at length by the Id. Consultant that when the competent authority (CCI & E) clarified during the Import and Export Policy period 1985-88 that ribbon for electronic typewriters could be imported under OGL when typewriter ribbons were in Appendix 2(b) (vide S. No. 100), why the same clarification should not apply to the Import and Export Policy for the period 1988-91; that Entry at S. No. 12(ii) of List 8 Pt. II of Appendix 6 of the Policy for the period 1988-91 clearly shows that ribbons for electronic typewriters could be imported under OGL.

Therefore the import of ribbons for electronic typewriters under OGL by the appellant was legal and the order confiscating the goods is not valid. The Id. consultant therefore prayed that the impugned order may be set aside and consequential relief may be provided to the appellant.

4. Shri K.N. Gupta, the Id. SDR appeared for the Revenue and submitted that all the clarifications referred to and relied upon by the appellants pertain to the Policy for the period 1985-88 and therefore were not applicable to the policy for the period 1988-91; that S. No.180 of Appendix 2(b) covered wide range of items; that in that column there was no mention whether the ribbon was for manual typewriters or electronic typewriters and therefore it applies squarely to manual as well as electronic typewriters; that para 21 (f) of the Import Policy for the period 1988-91 clearly provides : "(f). Any item in Appendices 2, 3, 5 or 8 with a specific or a generic description will preclude eligibility to its import under open general licence, except where the policy allows this clearly." The Id. SDR, therefore, contended that having regard to this specific provision in Chapter 2 on General licensing matters of the relevant policy, the goods could be imported only under a valid licence and not under OGL and have been rightly confiscated and that the penalty is accordingly justified in law.

5. Heard the contentions of both sides. On careful consideration of the submissions made before us, we find that there is force in what the Id.SDR submitted while referring to para 21 (f). This para clearly shows that when some goods have been mentioned in Appendix 2, 3, 5 or 8 as well as in the Appendices pertaining to OGL, those goods cannot be imported under OGL and shall require a licence.

6. We find that a lot of reliance was placed by the appellant on the clarification given by the Office of CCI & E but we find that that clarification pertains to an earlier policy period, i.e. for the period 1985-88 and cannot be claimed to cover the imports under the Import and Export Policy for the period 1988-91. The contention of the appellant that the item was covered in the Policy under Public Notice No. 44/ITC (PN)/85-88 dated 18-10-1985, we observe that this inclusion of the items under Appendix 6 will not help the importer in view of the specific provision under para 21 (f) of the Policy for the period April 1988-March, 1991.

7. In view of the above finding, we hold that specific licence was required for the items. As no licence was produced by the appellant, therefore, the goods have been rightly confiscated and penalty has been rightly imposed.

8. However, having regard to the fact that the importer is the actual user of ribbons for electronic typewriters as also looking to the evidence in its entirety and the facts of the case, we reduce the redemption fine to Rs. 1,00,000/- (Rs. one lakh only).

9. But for the above modification, we uphold the impugned order and dispose of the appeal accordingly.

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