Sukeshan Equipments Pvt. Ltd. Vs. Collector of Customs

Sukeshan Equipments Pvt. Ltd. Vs. Collector of Customs

SooperKanoon Citation : sooperkanoon.com/8283

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-07-1995

Reported in : (1995)LC93Tri(Delhi)

Appellant : Sukeshan Equipments Pvt. Ltd.

Respondent : Collector of Customs

Judgement :

1. The appellants are aggrieved with the order-in-appeal passed by the Collector of Customs (Appeals), Bombay, dated 21-4-1993.

2. The appellants described the impugned goods in the Bill of Entry No.0010521, dated 30-11-1992 as and claimed classification under sub-heading 8466.93 alongwith the benefit of Notification No. 40/78-Cus.

3. It is stated in the order-in-original that the machine was examined with reference to catalogue and technical literature in the presence of importers' representative. It is stated that this machine is capable of working on work pieces of maximum dimensions 2000 mm x 1000 mm x 260 mm. It is further stated that before performing the actual function of boring, X-Y coordinates have to be correctly aligned and marked on the work piece which is placed on the table of the machine. Marking of X-Y co-ordinate is done by milling operation. Milling cutter is attached to the spindle and X-Y Co-ordinate are finally machined on the work piece.

The correct alignment is checked by microscope attached to the machine.

After X-Y Co-ordinates are correctly marked the exact position where boring is to be performed were marked with the aid of microscope.

Thereafter a drilling tool is attached to the spindle and a light drilling is done on the exact spots where subsequent borings are expected to be performed. This action is to facilitate the boring tool to operate easily. After drilling is done boring tool is attached after removing drilling tool and boring is performed at the exact positions.

The jig or fixture is thus manufactured or formed. It is further stated in the order-in-original that these facts were brought to the notice of the importer and explained to them that the machine imported is capable of performing not only boring but milling and drilling operations also and, therefore, they were asked to explain as to why their claim for assessment at concessional rate of duty in terms of Notification No.40/78 should [sic] be rejected. The importers filed the replies dated 31-3-1993 and also as in their letter dated 15-3-1993 and explained that the milling and boring machines are only ancillary operations.

These were required to perform the main operation namely, boring.

Therefore, they plead, before the Assistant Collector that the machine cannot be called the drilling or milling machine and that it is Jig boring machine only.

4. The ld. Assistant Collector did not agree with the importer. He held that the Notification No. 40/78 is intended to be available to machine which performs only boring operation and as the machine was performing drilling and milling in addition to boring, the benefit of the notification could not be granted to.the same.

5. The importer preferred appeal before Collector (Appeals). The ld.Collector (Appeals) examined the certificate produced by importer from CMTI, Bangalore, manual of the machine and noted that the impugned machine may be used for drilling, boring, counter-sinking, reaming, facing with a universal tool holder and for milling jobs. He further noted that the machine may also be used for making precision patterns and for checking linear dimensions and centre-to-centre distances.

Therefore, the ld. Collector held that the machine ZE-470A machine is a general purpose machine tool having two spindle heads (vertical and horizontal) which is different from Jig boring machine and hence the benefit of the notification in question cannot be extended to them.

6. We have heard Shri V. Sridharan, ld. Advocate for the appellant and Shri B.K. Singh, ld. SDR for the Revenue.

7. Shri Sridharan, ld. Advocate contended that although the machine performed all the precision functions including boring and drilling, yet these functions were part of the jig boring machine and in order to attain precision, these operations were part of jig boring machine only. He contended that the machine is known in the trade as jig boring machine and it is bought and sold as such. To butters his arguments he relied on the technical literature and definitions of the term "Jig borer" as appearing at P.379 of McGraw-Hill Dictionary of Engineering, and term "Boring machine, boring mill" as appearing at page 82.

Boring machine (MECH ENG) A machine tool designed to machine internal work such as cylenders, holes in castings and dies; types are horizontal, vertical; Jig and single.

Boring Mill (MECH ENG) A boring machine tool used particularly for large work pieces; types and horizontal and vertical".

Jig (ENG) A machine for dyeing piece goods by moving the cloth at full width (open width) through the dye liquor on rollers.

(MECH ENG) A device used to position and hold parts for machining operations and to guide the cutting tool.

(MIN ENG) A vibrating device in which coal is cleaned and ore is concentrated in water.

Reference to few passages from 'Machine Tool Technology and Manufacturing Processes' by C. Thomas Clivo [Galgotia Publications (P) Ltd. 1989] at page 483,484 was also made. They are as follows : "Jig Boring, Jig Grinding and

Universal Measuring Machines and Processes Precision Jig Boring Machine Tools, Processes and Accessories.

The Jig borer is specially adopted to machine tool operations requiring extreme dimensional measurement accuracies. Linear and machining accuracies are expressed in terms of millionths of an inch (0.025mm). Repeatability in maintaining dimensional accuracy and complete positioning and machining controls make the jig borer an ideal machine tool for precision machining.

Jig borers are widely used in tool rooms for the construction of jigs and fixtures, punches and dies. Special cutting tools, gauges and other fine machine work. The basic processes include centering, drilling, reaming, through and step boring, counter-boring and contouring. Holes as smalls as 0.013" (0.33 mm) may be drilled without spot drilling. The spindles are rigidity constructed for power and strength in taking heavy hogging cuts. For example, the power, strength and rigidity of a hole-hog tool in taking a 1/2" (12.7 mm) cut on a jig borer is shown in Figure 57-1.

Since a great variety and number of tool-room applications require constant tool changing, a special shank design permits easy removal and replacement of cutting tools and non-cutting, locating and positioning devices. The Moore taper-shank, fast-lead square thread tool illustrated in Figure 57-2 ensures accurate, quick-change tooling and permits the removal and replacement of a tool to repeat the hole size on any diameter. Most jig borers have an infinitely variable spindle speed. Speed is read directly on a tachometer." Some passages relied from "Machine Tool Operations" by William J.Pattern (Reston Publishing Co. Inc) appearing at page 327 is noted below.

Many components of machines must be made to tolerance ranges of a few thousandths or less. To meet such tolerances, the tooling such as drilling jigs, that is to produce the component must be produced to even closer tolerances, as in the example given above. A tolerance range of + 0.0005 in or even finer is not unusual in tooling. The range of types of machine tools must, therefore, include machines capable of superior accuracy in drilling and milling, such machine tools are called jig borers".

From the book "Machine tools and processing for Engineers" by Charles R. Hine (McGraw-Hill Book Company) a passage appearing at P. 474 is relied, which is noted below : "Jig borers are the ultimate in machine tools. They are used for the express purpose of locating and making holes with greater accuracy than any other machine tool. Although the single-point boring bar is the most important tool used, drills, reamers, and counter bores are also used".

"A Jig borer has the essential elements of a vertical-spindle milling machine but it is built lower to the floor and is of much more rigid and accurate construction".

The ld. Advocate submitted that merely because the machine performed other functions by itself the benefit of the notification cannot be denied. He has drawn strength from the certificate issued by CMTI, Bangalore and the catalogues and literature of the supplier.

8. Shri B.K. Singh, ld. SDR countering the arguments of the Id-.

Advocate, submitted that it is an admitted fact that the machine in question is not a simple jig boring machine but it is a sophisticated machinery performing several other complicated functions. He submitted that the supplier is a Russian firm and their understanding is different from the American authors, whose references the ld. Advocate has relied. He countered by saying that even from the dictionary meaning of 'Jig boring' it should perform "mere drilling holes in jigs" (McGraw Hill Dictionary of Engineering). The fact that the machine can perform sophisticated functions, takes it out from the scope of the Notification No. 40/78-Cus. He referred to the extract produced by importer in paper book page 118 from the book Technology of Machine Tools' by Steve F. Krar J. William Oswald Fourth Edition (Gregg Division McGraw-Hill Publishing Co. from its page 487) which states If a jig borer is not available, the vertical milling machine may be used for jig boring purposes. When the vertical milling machine is used for accurate hole location, the some set up, locating and machining methods used in a jig borer apply. The co-ordinate system of hole location is used in each case. Since this topic is covered extensively in Unit 72, the reader is advised to refer to this unit before jig boring on a vertical milling machine. Since the vertical milling machine does not have the same lead screw accuracy as a jig borer, it must have some external measuring

system to ensure the accuracy of the table setting. Measuring rods and dial indicators, at a vernier scale, or optical measuring devices, such as digital readout boxes, may be used for this purpose".

Ld. SDR also referred to extracts from "Machine Tools" translated from the Russian by Felix PALKIN (Mir Publishers Moscow) at page 230 (page 144 of Paper Book) and argued that these understanding by the Russian Authors was different from the American especially McGraw Hill Books referred by Adwak extract from page 230 referred is "Jig borers are intended for laying out, centering, drilling, reaming and finish boring holes, machining form contours, milling boss face surfaces etc. These machines are used for the finish boring of holes, which should be located with respect of other bores or datum surfaces to a very high degree of accuracy".

Ld. SDR stated that notification referred only to jig boring machines and not to those machines which do perform several other functions alongwith it. The literature by the ld. Advocate discussed about special specific machines which performed several functions. He pointed out from the extract from Technology of Machine Tools (extracted supra) that "if a jig borer is not available, the vertical milling machine may be used for jig boring purposes" and argued that this clearly disclosed that jig boring machines were different from drilling or milling machines. Ld. SDR relied on the ruling rendered by the Tribunal in the case of Batliboi v. Collector of Cus., Bombay, 9. We have carefully considered the submissions of both the sides, perused the entire records, technical literature, catalogue and the impugned orders.

10..The S. No. 2 of the table appended to Notification No. 40/78-Cus.

reads - "tool room precision co-ordinate jig boring machine with or without numerical control".

11. The ld. Collector has noted the details of the imported machine in paras 21 and 22 of his order which is noted herein below: "21. On the front page of the Manual, in addition to foreign languages, following has been stated "jig Boring Machines" "2B460A, 2E470A". The application, of the above machines, is

mentioned at page 43, of the manual, in English version. In the opening paras, it is stated as under :- "The Jig boring machines models 2E460A, 2E460A and 2E470A are designed for machining holes in large size jigs, fixtures and workpieces where the job requirements as to the accuracy of the relative position of the holes are very high.

The machines may be used for drilling, boring, countersinking, reaming, facint with a universal tool holder and for milling jobs.

The machines may be also used for making precise patterns and for checking linear dimensions and centre to centre distances.

Thus these machines are used not only for performing a great variety of accurate boring jobs, but also for making accurate measurements with reference to rectangular axes in both vertical and horizontal planes.

The 2E460A machine is a general purpose machine tool having two spindle heads (vertical and horizontal). The table working surface is 1000 x 1600 mm (width and length). Mass of the machine is 20,000 kg.

The 2B460A machine is a modification of the 2E460A machine both having common basic parameters. This machine has only a vertical spindle head (horizontal spindle head is not provided). Mass of the machine is 17,000 kg.

The 2E470A machine (Fig.l) is a general purpose machine tool having two spindle heads (vertical and horizontal). It differs from the 2E460A machine by its basic parameters. The table working surface is 1400 x 2240 mm (width and length). Mass of the machine is 32,500 kg." "22. From the above excerpted paras, it is noticed that the impugned machine may be used for drilling, boring, counter-sinking, reaming, facing with a universal tool holder and for milling jobs. Further, the machine may also be used for making precise patterns and for checking linear dimensions and centre to centre distances. Further, the 2E470A machine is a general purpose machine tool having two spindle heads (vertical and horizontal). It is thus evident that the impugned machine is a general purpose machine tool and is different than the one held, to be Jig boring machines, by me, vide my order No.

236/92, dated 6-7-1992. The impugned machine, being a general purpose machine tool, as described in the operational manual, of the manufacturer's having multiple functions, I am not inclined, to accept the same, as on par, with the above case law cited by and relied upon, by the Appellants. Accordingly, I am of the opinion, that the impugned machine, will not be eligible, for the duty exemption under Notification No. 40/78 claimed, by the Appellants." In this case, it is an admitted fact that the imported Russian machine performs several complicated precision, accurate drilling and milling apera- tions. The definition of the boring machine, boring mill and jig borer in single term as appearing in the McGraw Hill Dictionary of Engineering as extracted supra discloses that a jig borer is a "machine tool resembling a vertical milling machine for locating and drilling holes in jigs." The definition of a boring machine is different. We have to go by the understanding in common parlance of a jig boring machine. The technical literature is merely an aid for our understanding. The certificate of CMTI, Bangalore, relied by the importer also states that "Hence all jig boring machines must have capability for carrying out light milling and drilling operations, though the principal operations carried out on a jig boring machine is jig boring operation. There is no jig boring machine which cannot perform light milling and drilling operations", The certificate emphasise that the jig boring machine must have capability for carrying out light milling and drilling operations. The ld. Collector has also not accepted this certificate, as the same had been issued without even examining the machine in question. We do not find any infirmity in this portion of the impugned order.

The importer is also relying on the opinion of DGTD, dated 1-2-1989 which has recommended for change of nomenclature in the S. No. 2 of the Notification No. 40/78-Cus., dated 1-3-1978 to read as follows :- "Jig boring and milling machine/co-ordinate boring and milling machine with/without CNC positioning accuracy of 0.003 mm over 500 mm to a maximum of 0.005 mm over any other traverse more than 500 mm repeatability of 0.002 mm, spindle run out at main spindle bore 0.003 mm or better".

This clearly shows that the opinion is a mere recommendation to revenue to change the S. No. 2 of Notification No. 40/78. It follows that the present reading of

S, No. 2 of Notification 40/78-Cus. does not intend to grant exemption to the type of "Jig boring and milling machine/co-ordinate boring and milling machine" with the type of description as recommended by DGSD.It is an admitted fact that the imported machine is a highly complex, sophisticated machinery performing computer accuracy functions, being automatic and to be placed in AC Room. There are several models in these machines. The imported item is one such model. The catalogue of each model is also placed in the paper book. A perusal of which clearly indicates that it does not perform just light milling or drilling as understood by a leading tool room organisation like CMTI, Bangalore but it is a sophisticated machinery. It is well settled that only plain meaning has to be given to the words used in notifications. The opinion of DGSD makes it clear that this type of machinery is not intended to come within the S. No. 2 of Notification No. 40/78 and hence had recommended for change in the notification.

The technical literature relied by ld. Advocate deals about sophisticated operations of 'Jig borer machines'. The same literature also deals about simple operations performed by a 'jig borer machine'.

Therefore, the common under-Standing of a 'jig borer machine' is one that is given in the Dictionary of Engineering (P- 379 of McGraw Hill) as extracted above and the meaning given by the certificate of CMTI, Bangalore that only light milling & drilling opera-tions are to be carried out and not sophisticated, computerised precision oriented, with several other composite and multiple functions. Therefore, S. 'No.2 of the Notification No. 40/78-Cus. did not imply to grant exemption to the type of machinery imported by the appellant.

In the case of Batliboi & Co. Ltd. (supra), the Tribunal held at paras 4 and 5 as follows :- It is clear that the Tribunal dealt with the same notification as in the present case and the above findings squarely apply to the facts of the case. Applying the ratio of the above ruling and in the light of our findings, we do not see any good reason to interfere with the impugned order and hence we order for rejecting the appeal.

12. I have carefully perused the order proposed by the learned brother but I regret I am unable to agree with the conclusion reached by him.

My order is as follows :- 12.1 The goods imported are "CNC Jig Boring Machine Model 24K40CF4 (Precision Accuracy over 300 mm Travel)" with accessories. The appellants have claimed classification under sub-heading 8466.93 as also benefit of Notification No. 40/78-Cus. There is no dispute regarding classification. Dispute is whether the benefit of the aforesaid notification is available to the goods or not. S. No. 2 which is the relevant serial number in the Table to Notification No.40/78-Cus., dated 1-3-1978 is reproduced below :- "S. No. 2 - Tool Room Precision Co-ordinate Jig Boring Machine with or without numerical control." 12.2 The lower authorities have denied the benefit of notification on the ground that the machine in addition to the function of boring a hole, it is also used for drilling, countersinking, reaming, facing with a universal tool holder and for milling jobs. Further the machines may also be used for making precise patterns and for checking linear dimensions and centre to centre distances. Further, the lower appellate authority relying on the catalogue of the supplier has held that it is a general purpose machine tool having two spindle heads. It has, therefore, been held that it is not a Jig boring machine entitled to the benefit of Notification No. 40/78.

13. Learned Advocate has stated that the machine imported by the appellants as a Jig boring machine is sold all over the world by the suppliers as a Jig boring machine. There is no evidence to the contrary that machine under consideration is not sold as a Jig boring machine and that the documents of import i.e. contract, invoice, bill of lading etc. are made up at the behest of the appellant. On the other hand, in his support he relies on Suppliers' journal Stankoimport Review, dated 9th December 1983 available at page 153 of the Paper Book which indicates that the Jig Boring Machine is exported to a number of countries in that style and name. He has relied upon several pieces of Technical literature which indicate that Jig Boring machine does all the functions of ancillary nature as mentioned by the lower appellate authority apart from principal function of boring the hole : (i) Technology of Machine Tools (4th edition) by Steve F. Krar and J.William Oswald. The relevant portion thereof relied by the learned Advocate is given below :- "Section 13 - The jig borer was developed primarily to overcome the toolmaker's perpetual problem of accurately locating and producing holes. The jig borer is especially useful in the manufacture of jigs and fixtures when there must be an

accurate dimensional relationship between the locators aligning the workpiece and the bushing holes which are used to provide accurate hole locations. It is an invaluable machine tool in the manufacture of simple, compound, progressive, and lamination dies, which require great accuracy between a variety of locating parts. Holes in the punch pad and die plate, pilot holes, and bushing holes which align the stripper plate are obvious 'naturals' for a jig borer. Such holes can be produced quickly and accurately. By interchanging the tools in the spindle of the jig borer, operations such as drilling, boring. Teaming and counterboring can be readily performed.

A wide variety of accessories enable a jig borer to meet three basic requirements, accuracy, versatility and productivity. Only accessories concerned with drilling, boring and reaming will be dealt with in this unit.

Key type and keyless chuks are used to hold the smaller sized straight shank spotting tools, drills, and reamers.

Single point boring, the most accurate method of attaining locational accuracy in jig boring makes it necessary to have a wide variety of boring tools....

Since the beginning of the machine age, the problem of locating holes accurately has plagued the toolmaker. Before the development of accurate locating and measuring machines, the toolmaker was faced with a tendious and costly, though reasonably accurate, method of locating holes. The jig borer, first developed in 1917, now provides the toolmaker with a means of quickly and accurately locating holes to within an accuracy of 0.000090 in. over 18 in. of length (0.002 mm over 450 mm of length). It is used to finish bore holes in material left soft or to rough bore holes in work which will later be hardened and jig ground.

12.3 Jig Borers - Jig borers are intended for laying out, centering, drilling, reaming and finish boring holes, machining form contours, milling boss face surfaces, etc.

These machines are used for the finish boring holes, which should be located with respect to other bores or datum surfaces to a very high degree of accuracy.

No jigs whatever are required in these machines to ensure accuracy of location. For this purpose, use is made of special devices ensuring accurate positioning of machine's operative members, including precision lead screw and nut mechanisms equipped with vernier dials, slip, gauges and adjustable gauges in combination with dial indicators; precision scales in combination with optical read-out devices, screw type inductive transducers; and also mechanical, optical-mechanical, optical, opticoelectric and electrical measuring systems.

(3) Machine Tool Design - N. Lisitsyn, A. Gavryushin, O. Thifonov, A. Kundryashov-General Editor N. Acherkan, D.Sc.(Eng.) - Jig borers are used to machine holes which must be located with a high degree of accuracy in reference to the datum surface of the workpiece (within 0.005, or even 0.001 mm). In addition to all kinds of hole-making operations, these precise machines can be employed for milling flat surfaces, and as a measuring machine for inspection and layout operations. The measuring systems used to establish precise co-ordinate location can be classified as: mechanical, opticomechanical, optical opticoelectric. and electric." 13.1 He also relies on opinion of Industrial Adviser in the Directorate General of Technical Development of the Government of India addressed to the then Collector of Customs, Shri K. Vishwanathan. The opinion is dated 1-2-1989. In order to appreciate the opinion, it is reproduced in extenso :- "1. I am directed to refer to your d.o. letter No. SC-INF/128/VKS/88 SIIB, dated 28-12-1989 addressed to Secretary (TD) and DG (TD) seeking clarification from DGTD on the import of Universal Milling and Boring Machine/Bed type milling machine being imported under the nomenclature Tool Room Precision Coordinate Jig Boring Machine' by various companies.

2. The then Secretary (TD) & DC(TD), Shri P.R. Latey, in his d.o.

letter dated 9th April, 1986 addressed to Shri H.M. Singh, Principal Collector, Customs & Central Excise had given ample clarification on this issue. We have further examined the parameters so as to give the correct classification for jig Boring Machine. The Tool-makers' Association and the Indian Machine Tool Manufacturers' Association in turn had also been consulted after consulting CMTI also and we have come out with the suggestion for indicating the accuracy and

other specifications under which the Machine could be classified as 'Tool Room Precision Coordinate Jig Boring Machine'.

3. In the light of the above, DGTD recommend that only such machines with the following description and specification and accuracy should be termed as Tool Room Precision Coordinate Jig Boring Machines' and which is eligible for duty concession under Customs Notification No. 40/78-Cus., dated 1-3-1978.

'Jig boring and milling machine/co-ordinate boring and milling machine with/without CNC positioning accuracy of 0.003 mm over 500 mm, to a maximum of 0.005 mm over any other traverse more than 500 mm. repeatability of 0.002 mm, spindle run cut at main spindle bore 0.002 mm or better.' 4. In order to avoid ambiguity, DGTD have also taken up the matter with the Department of Revenue for change in the description of the existing entry from Tool Room Precision Coordinate Jig Boring Machine to - 'Jig boring and milling machine/coordinate boring and milling machine with/without CNC positioning accuracy and 0.003 mm over 500 mm to a maximum of 0.005 mm over any other traverse more than 500 mm repeatability of 0.002 mm., spindle run cut at main spindle bore 0.002 mm or better."[Emphasis supplied by me] 13.2 The learned advocate has also relied on a certificate, dated 6-4-1993 from the Central Machine Tool Institute (CMTI). In order to appreciate the opinion of CMTI this certificate is also reproduced in full :- "We have examined the following documents with respect to Jig Boring Machine Model 2E 470A being imported from Russia by M/s. Sukeshan Equipment Pvt. Ltd., W-16, MIDC Badlapur, Post Kulgaon 421 508 (Dist. Thane).

1. Pictorial view of Russian Jig Boring Machine Model 2E 470A (2 sheets) 2. Copy of Order of the Assistant Collector of Customs Group 5A, dated 1-4-1993.

1. Surface milling and drilling operations are operations preceding a Jig boring operations. All these operations must be performed on the same machine in the same setting to ensure perpendicularity of the milled surface to the bore and to ensure the accuracy of the bored hole. Surface milling is also done on Jig Boring Machines to establish datum surfaces for coordinate boring. A hole cannot be bored unless it is drilled first. Hence all Jig boring machines must have capability for carrying out light milling and drilling operations, though the principal operation

carried out on a jig boring machine is jig boring operation. There is no jig boring machine which cannot perform light milling and drilling operations.

2. In view of the above in our opinion the Jig Boring machine Model 2E 470A being imported from Russia by M/s. Sukeshan Equipments Pvt.

Ltd. meets the requirements of constructional features of a jig boring machine and hence qualified to be classified under the category of a jig boring machine." 14. Learned SDR, on the other hand, relies on the definition of 'Jig Borer' read with the definition of boring machine given in McGraw Hill Dictionary of Engineering already reproduced in the proposed order of the learned brother. He submits that the function of a boring machine is simply to bore the hole i.e. to enlarge an already existing hole. It is admitted to the appellants that the imported goods besides carrying out the function of boring the holes does many other functions. He has, therefore, supported the order of the lower authorities. He also relies on three Members Tribunal's decision in the case of Batliboi v. C.C., mentioned above in the learned Brother's order. He submits that this is also a case on Notification 40/78. He further submits that this judgment is binding on the Tribunal.

14.1 In his rejoinder, learned advocate, Shri V. Sridharan for the appellant, submits that Batliboi case does not apply to the facts and circumstances of this case. The machine entitled to benefit of concessional rate of duty under the said notification now is Jig Boring Machine whereas Batliboi's case dealt with the entry as stood in the notification at that time i.e. as 'boring machine'. He submits that jig boring machine and boring machines are known differently in commercial parlance. He submits that dictionary meaning relied upon by the learned SDR is no guide for the purposes of assessment, as has been settled by the Apex Court in a number of decisions that the first and foremost test in interpretation of taxing statutes is how the terms expressed in that statute are understood to the trading and industrial community who deal with the said Acts i.e. Customs Act or Customs Tariff Act.

15. I have carefully considered the pleas advanced on both sides. On the basis of evidence available on record, no doubt is left whatsoever that jig boring machines as they are known in the international trade and commerce, apart from performing

the principal function of boring the holes performs the other ancillary functions, as mentioned above.

The distinction sought to be made by the learned SDR that the American concept of jig boring machine, literature for which has been relied upon by the learned advocate is different from Russian concept of a jig borer. On going through the material reproduced above, I do not agree with the contention of the learned SDR. Literature available on record from both Russia and America clearly indicate that a jig boring machine does all other ancillary functions apart from boring of the holes.

15.1 Regarding discarding the CMTI's certificate on the ground that the certificate is based without looking at the goods imported is of no value, is to my mind a very superficial way of discarding a very relevant piece of evidence. CMTI is a renowned Institute of machine tool and is in a position to give a certificate as they have given. It is seen from the certificate as reproduced in full that they have given this certificate, no doubt without looking at the goods but clearly looking into the documents of import and the order-in-original passed by the Assistant Collector. No doubt has been raised by the respondents herein that there is a discrepancy between the goods actually imported and the goods described in the documents of import etc. I, therefore, feel that validity of the certificate cannot be challenged on the ground taken by the lower appellate authority in discarding the said certificate. The certificate is very categorical that all jig boring machines must have the capability for carrying out light milling operations, though the principal operation carried out on a jig boring machine is jig boring operation. There is no jig boring machine which can perform light milling and drilling operations. Expression 'light milling and drilling operation' is attempted to be contrasted with 'sophisticated and computerised precision oriented' operations. In my view, light milling and drilling operations should be contrasted with heavy milling and drilling operations. Light milling and drilling operations may be sophisticated and computerised precision oriented operation.

15.2 Opinion of DGTD is sought to be discarded by the lower authorities on the ground that it is merely a recommendation to change the existing entry at S. No. 2 in Notification 40/78. It is argued by the learned SDR that so long as entry at S.

No. 2 in Notification 40/78 remains unchanged opinion of DGTD is not of any consequence. Law has to be interpreted on the language of the existing wordings and not on the basis of the recommended wordings of the Industrial Adviser in the DGTD. A careful reading of the opinion does not support the view of the learned SDR and of the lower authorities. Para 3 of the opinion, as reproduced above in full, clearly indicates that the machine with the specifications given in the said para would meet with the description as given at S. No. 2 of the Table to Notification 40/78. It is only in order to avoid ambiguity that DGTD appears to have taken separately with the Department of Revenue for change in the existing entry at S.No. 2 of the Table to Notification 40/78. At best, therefore, it can be said in favour of the department that DGTD's opinion, dated 1-2-1989 shows that there is at present an ambiguity in the present wording of S. No. 2 of the Table to Notification 40/78. It is a well settled principle of construction of statute that in case of any ambiguity, the benefit should go to the subject i.e. the assessee. In any case the specifications of the imported machines are within the range opined by the DGTD which according to them fall within the scope of Tool Room Precision coordinate Jig Boring Machine.

15.3 It is also well settled by the Apex Court that commercial parlance test has to be preferred over the Dictionary meanings in the absence of any definition of a particular expression in the statute. I am, therefore, of the view that the literature available on record regarding what the jig boring machine should be preferred over the Dictionary meaning even though it may be a Dictionary of Engineering Terms. Batliboi's case (supra) relied upon by the learned advocate has no application to the instant machine, as rightly contended by the learned advocate. The machine in that case was 'boring machine' simplicitor whereas the machine in this case is a jig boring machine.

Commercial understanding of the two machines is totally different.

Hence, I allow the appeal.

A point of difference has arisen between the two Members which is as under :- "Whether in the facts and circumstances of the case the imported goods are entitled to the benefit of S. No. 2 of the Table to Notification 40/78, dated 1-3-

1978." [Order per : Harish Chander, President]. - I have perused the order written by my learned brothers, Shri PC. Jain, Member Technical and Shri S.L. Peeran, Member Judicial. The following point of difference has been referred to me: Whether in the facts and circumstances of the case the imported goods are entitled to the benefit of S. No. 2 of the Table to Notification 40/78, dated 1-3-1978? My both learned brothers have narrated the facts extensively in their orders and as such, I need not reproduce the same.

17. Shri V. Sridharan, the learned advocate had appeared on behalf of the appellant. He pleaded that the appellant had imported jig boring machine model 2E470A (tool room precision co-ordinate jig boring machine with or without numerical control) and the assessment has been made under Heading 8459.39. He further argued that the appellant had claimed the benefit of Notification No. 40/78-Cus., dated 1st March, 1978 vide Serial No. 2 appearing in the notification and this benefit has been denied by the lower authorities. Description in the notification at Serial No. 2 is "Tool Room Precision Co-ordinate Jig Boring Machine with or without numerical control." Shri Sridharan, the learned advocate argued that principal function of the machine is jig boring and it performs additional function of drilling and milling as per revenue. He pleaded that there is a fundamental error for reading jig boring machine as a boring machine. Jig boring machine performs all the functions of drilling and milling etc., whereas the boring machine performs only boring function. He argued that there is no charge of misdeclaration or misdescription and no penalty has been levied and the catalogues filed by the appellant have been duly accepted and there is no doubt as to their genuineness and all the import documents uniformly describe the imported machine as a jig boring machine. He referred to the import documents starting from contract No. 64-03/02223-322 which appears on pages 10 to 13A and page 13 is the appendix to the contract which has got full details of the machine as well as extra accessories.

He referred to the invoice which appears on page 14 of the paper book and the description of the machine has been given as jig boring machine and the contract of machine appears on pages 10 to 13A. Bill of Lading appears on page 15 of the paper book. Even in the Bill of Lading the description is given as jig boring

machine and on page 16 appears the insurance certificate and on page 19 is the certificate of origin. He argued that the machine is of Russian origin and on page 24 appears the certificate of acceptance. On page 20 of the paper book appears the catalogue of the machine. The catalogue itself describes the machine as jig boring machine. On page 21 appears the description of precision of double column tool room jig boring machine 2E470A and 2E460A. He argued that the Assistant Collector relies on the wording in this machine as the catalogue describes : "The machine tools are intended for machining, precision holes in large size jigs. The machines can be used for drilling, counter-boring, reaming, boring, spot-facing, milling, marking precision templates, etc." He referred to page 31 of the paper book where the service manual of the machine appears. He referred to pages 32 to 43 of the pamphlet and argued that it is a jig boring machine. Shri Sridharan, the learned advocate referred to the journals Stankoimport Review No. 60 and 61 which appear on pages 152 to 155 of the paper book and on internal page 21 it describes 2E170 jig boring machine working surface of table 1.400 x 2.240 mm. travel: table 2.000 mm, spindle head (cross travel) 1.400 mm. Distance : spindle face to table 1.400 mm. Boring capacity 250 mm. Shri Sridharan referred to volume No. 60 of Stankoimport Review internal page 9 which appears on page 155 of the paper book and on this page there is a description of 2E470A jig bore is produced by the Sverdlov Machine Tool Building Amalgamation in Leningard. He also referred to volume No. 61 of Stankoimport Review appearing on pages 155 to 156 and on page 156 internal page 28 of the journal again there is a description as : "Excellent performance of the Soviet machine over a long period of time influenced by the decision of Dixi S.A. to purchase a heavy jig borer of Soviet make. The Sverdlov Machine Tool Building Amalgamation in Leningard was chosen as the manufacturer. The machine, a 2E470A heavy double-column jig borer (work table surface 1.400 by 2.240 mm) is to be delivered to Dixi S.A. under a contract signed by V/O Stankoimport and its commercial agent M. Und D. Gertner." He referred to volume 73 of the same journal on pages 159 and 160 of the paper book. On page 159 there is mention : "We also run Soviet-made hobbers gear shapers, and lathes; there are also an upright drill press and a 2E470A high-precision jig borer. They are used for finish machining." He referred to pages 160 and 163 of the paper book. On page 160 it is mentioned: "This

vertical jig bore, Type 2E470A, had been built by the Sverdlov factory in Leningard to the order of the company. The machine was installed in 1981 and is used for precision machining." On page 163 of the paper book there is description of type 24656P 11 horizontal boring machine. Thereafter, he referred to the technical books and referred to the McGraw-Hill Dictionary 4th edition Technology of Machine Tools by McGraw-Hill Publishing Company and referred to page 487 where the description of jig boring of vertical drilling machine has been given. He referred to page 121 Section 13, the Jig Borer and Jig Grinder where it has been described that : "The jig borer was developed primarily to overcome the toolmaker's perpetual problem of accurately locating and producing holes. The jig borer is especially useful in the manufacture of jigs and fixtures when there must be an accurate dimensional relationship between the locators aligning the workpiece and the busing holes which are used to provide accurate hole locations. It is an invaluable machine tool in the manufacture of simple, compound, progressive and lamination dies, which require great accuracy between a variety of locating parts. Holes in the punch pad and die plate, pilot holes and bushing holes which align the stripper plate are obvious "naturals" for a jig borer. Such holes can be produced quickly and accurately. By interchanging the tools in the spindle of the jig borer, operations such as drilling, boring, reaming and counterboring can be readily performed." On page 123 appears the description of jig borer and also on page 124 having the details of the functions of the machine which is reproduced below :- A wide variety of accessories enable a jig borer to meet three basic requirements : accuracy, versatility and productivity. Only accessories concerned with drilling, boring, and reaming will be dealt with in this unit.

Key-type and keyless chucks are used to hold the smaller-sized straight-shank spotting.tools, drills and reamers, special collets are used to hold the larger straight-shank spotting tools, drills, and reamers. A setscrew in the collet is tightened against a flat on the tool shank, providing a positive grip, which eliminates twisting and scuffing of the tool shank.

Single-point boring, the most accurate method of attaining locational accuracy in jig boring, makes it necessary to have a wide variety of boring tools. The most

commonly used boring tools are a solid boring bar, a swivel block boring chuck, an offset boring chuck, and a DeVlieg microbore boring bar." On page 129 Unit 72 relates to jig-boring holes. Pages 121 and 122 of the paper book relates to versatile machines. He referred to pages 143 and 144 of the paper book "Machine Tools" by N. Chernov which gives the description of jig borers. He also referred to pages 148 and 149 of the paper book "Machine Tool Design" by N. Lisitsyn, A. Gavryushin, O.Trifonov, A. Kudry Ashov, General Editor N. Achkerkan, D, Sc. (Eng.) translated from the Russian by Nicholas Weinstein. He referred to para 22.1 of the book which describes jig borers as under :- "Jig borers are used to machine holes which must be located with a high degree of accuracy in reference to the datum surfaces of the workpiece (within 0.005, or over 0.001 mm). In addition to all kinds of hole-making operations, a measuring machine for inspection and layout operations.

The measuring systems used to establish precise co-ordinate location can be classified as : mechanical, optico-mechanical, optico-electric and electric.

This chapter deals with the Soviet Jig borer, model 2B440, which has an apticomechanical co-ordinate reading and measuring system, using precisely engraved flat glass scales and a viewing screen with a spiral eyepiece micro meter, and with model 2A450 which is an auto-positioning machine incorporating co-ordinate preselection." He then referred to pages 180 and 181 of the paper book "Machine Tool Technology and Manufacturing Processes" by C. Thomas Olivo. Shri Srid-haran, the learned advocate also referred to pages 183 to 186 of the paper book "Machine Tool Operations" and "Machine Tools and Processes for Engineering". Shri Sridharan argued that jig boring machine has been equated with a boring machine. He also referred to para Nos. 5, 6, 7 and 8 of the order passed by the Member Judicial.

Shri Sridharan relied on an order in the case of HMT v. Collector of Customs vide order No. 439/1988-B2, dated 12th October, 1990 and made specific reference to paras No. 4 and 6 of the order. He referred to the Russian book which appears on page 113 of the paper book. He referred to the Central Machine Tool Institute, Bangalore's opinion. He referred to pages 96, 97, 98 of the paper book. He

pleaded that in the certificate they have opined that "the Jig Boring machine Model 2E 470A being imported from Russia by M/s. Sukeshan Equipments Pvt. Ltd., meets the requirement of constructional features of a jig boring machine and hence qualified to be classified under the category of a jig boring machine." He also referred to DGTD certificate which appears on pages 74 and 75 of the paper book. The certificate is dated 1st February, 1988. Shri Sridharan, the learned advocate referred to the following decision :- 1988 (38) E.L.T. 568 (SC) at page 570 para 4. United Offset Process Pvt. Ltd. v. Asst. Collector of Customs.

Shri Sridharan argued that the Member Judicial has relied on the McGraw-Hill Dictionary para 7 which is not correct. He referred to the Metal Box India Ltd. 's Writ Petition No. 439 of 1981. Shri Sridharan pleaded that the view expressed by the Member Technical is correct and the same should be followed.

18. Shri B.K. Singh, the learned SDR relies on the Member Judicial's order. He referred to page 32 of the paper book. There the description of the machine 2E470A is given as under :- "The 2E470A machine is a general purpose machine-tool having two spindle heads (Vertical and horizontal). It differs from the 2E460A machine by its basic parameters. The table working surface is 1.400x 2240 mm (width and length). Mass of the machine is 32.500 kg." He pleaded that model 2E470A was imported by the appellant. That is a general purpose machine.

He referred to pages 140,141,149,123,163 and 129 of the paper book. He also referred to page 97 of the paper which is a certificate issued by Central Machine Tool Institute, Bangalore. He referred to the letter dated 1st February, 1989 written by Shri D.M. Malik, Industrial Adviser to Shri Vishwanathan, Collector of Customs, Bombay which appears on pages 74 and 75 of the paper book. Shri Singh referred to the decision in the case of Batliboi & Co. Ltd. v. Collector of Customs, reported in 1987 (32) E.L.T. 118. He argued that in the decision HMT of the Bombay High Court Para 4 of Batliboi's case was not referred. Shri Singh refers to the Industrial Advisor's letter. He pleaded for the acceptance of the view of judicial Member.

19. Shri V. Sridharan, the learned advocate in reply pleaded that the facts of the Batliboi's case reported in 1987 (32) E.L.T. 118 are different and cannot be applied in this case.

20. I have heard both the sides. I have duly considered oral submissions of both the sides and written submissions filed by the appellant. Member Judicial in para 11 of his order which appears on internal page 7 of the order has reproduced the details of the imported machine as per Collector. The Collector in his order in paras No. 21 and 22 has discussed the functions of the machine. For the proper appreciation of the function of the machine, paras No. 21 and 22 from the order passed by the Collector are reproduced below :- * * * * * * Member Judicial in his order has observed that "It is an admitted fact that the imported Russian machine performs several complicated precision, accurate drilling and milling operations. The definition of the boring machine, boring mill and jig borer in single term as appearing in the Macgraw-Hill Dictionary of Engineering discloses that a Jig borer is a "machine tool resembling a verticle milling machine for locating and drilling holes in jigs." The definition of boring machine is different and we have to go by the understanding in common parlance of a jig boring machine." 21. Marks' Standard Handbook for Mechanical Engineers by Baumeister Avallono Baumelster Eighth Edition describes boring machines, drilling machines and milling machines on pages 1359,1360,1361 and 1362 as under :- I have looked into the catalogue of the imported machine. In the Metals Handbook eighth edition, Volume 3 Machining prepared under the direction of the ASM Handbook Committee, American Society For Metals, Metals Park, Ohio on Page 20 Boring is described as under :- "BORING is a machining process in which internal diameters are generated in true relation to the centerline of the spindle by means of single-point cutting tools, and is most commonly used for enlarging or finishing holes or other circular contours. Although most boring operations are done on simple, through holes (ranging upward in diameter from about 1/4 in.), the process is also applied to a variety of other configurations. Tooling can be designed for the boring of blind holes, holes with "bottle" configurations, circular-contoured cavities, and bores with numerous steps, undercuts and counter-bores. The process is not limited by length-to-diameter ratio of holes; with the workpiece properly supported, holes having diameters that exceed length (or vice versa) by a factor of 50 or more have been successfully bored.

Boring is sometimes used after drilling, to provide drilled holes with greater dimensional accuracy or improved finish. It is more widely used, however, for

finishing holes too large to be produced economically by drilling, such as large cored holes in castings or...pierced holes in forgings. In many applications, boring is done in conjuction with turning, facing or other machining operations.

The scope of this article is limited to applications in which boring is the sole operation or in which it is the major operation in a machining sequence," A perusal of the same shows that boring is sometimes used after drilling to provide drilled holes with greater dimensional accuracy or improved finish. Thus drilling itself is the principal function. For the proper appreciation of the legal position, relevant extract of Notification No. 40/78, Serial No. 2 is reproduced below: "Tool room precision Co-ordinate Jig Boring Machine with or without numerical control." A simple reading of serial No. 2 of the notification clearly shows that the principal function of the machine is jig boring, whereas in the matter before me the principal function of the machine is drilling. The Tribunal had occasion to deal with similar situation in the case of Guest Keen Williams Ltd. v. Collector of Customs, Calcutta, reported in 1987 (29) E.L.T. 68 (Tribunal). Paras No. 18, 24, 25,26,27 and 28 are reproduced below:- It is a settled law that while interpreting a notification the scope of the notifica -tion cannot be enlarged by supplying intendment when the language is clear. Hon'ble Supreme Court in the case of Hemraj Gordhandas v. H.H. Dave, Asst. Collector of C.E. & Customs, reported in 1978 (2) E.L.T. (J 350) (para 5), had held as under :- * * * * * * Hon'ble Bombay High Court in the case of Jenson and Nicholson (India) Ltd. v. Union of India and Ors., reported in 1981 (7) E.L.T. 128 (Bom.) and Hon'ble Madras High Court in the case of Indian Organic Chemicals Ltd. v. Union of India and Ors. reported in 1983 (11) E.L.T. 34 (Mad.) had taken the same view. Member Judicial has relied on the decision in the case of Batliboi & Co. Ltd. v. Collector of Customs, Bombay, reported in 1987 (32) E.L.T. 118 (Tribunal) (paras 4 and 5) where it was held as under :-Novopan India Ltd. v. Collector of C. Ex. and Customs, Hyderabad, reported in 1994 (73) E.L.T. 769 (SC) had held that while interpreting a notification where two interpretations are possible, the interpretation which is in favour of the revenue should be adopted. Paras No. 14,15, 16,17 and 18 of the said judgment are reproduced below :- The learned advocate had cited judgments on the issue, but the judgments cited by him do not help him. Learned brother Member Judicial has extracted the common understanding of big boring machine as given in the

McGraw Hill Dictionary of Engineering page 379.

22. In view of the above discussion, I am of the view that the appellant is not entitled to the benefit of Notification No.40/78-Cus., dated 1st March, 1978. Accordingly, I concur with the view expressed by Member Judicial. The point of difference referred to me is answered accordingly. Registry is directed to place the matter before the Bench for passing appropriate orders.

23. In accordance with the majority decision, we hold that in the facts and circumstances of the case the imported goods are not entitled to the benefit of exemption Notification No. 40/78, dated 1-3-1978 vide Sl. No. 2 thereof. Accordingly, we uphold the impugned order and reject the appeal.