

**National Electronics Vs. Collector of Customs**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Mar-10-1995

**Reported in :** (1995)(77)ELT650TriDel

**Appellant :** National Electronics

**Respondent :** Collector of Customs

**Judgement :**

1. M/s. National Electronics have filed these appeals being aggrieved by the order passed by the Collector (Appeals). The Collector (Appeals) in his order had held :- "I have carefully considered the submissions of the appellants, both written and oral, as well as the record of the case. The appellant's claim for allowing assessment under Heading 84.66 considering the goods imported as Project Import, was rejected by the adjudicating authority on the ground that the machines imported did not constitute an industrial plant or project and that they cannot be said to be meant for substantial expansion of existing project. The appellants, however, have pleaded that theirs being a manufacturing company having approved manufacturing programme from appropriate authority, the goods imported by them should enjoy the benefit of Project Import. In support of their contention the appellants have also referred to an importation by M/s. Gramophone Company of India where similar goods were allegedly allowed benefit of Project Import.

The importation by M/s. Gramophone Company of India and referred to by the appellants have no relevance to the subject case since the goods imported by

them were different from the goods in this case.

Hence the appellants have imported one labelling machine and one Cello wrapping machine. These machines cannot by any stretch of imagination, be called machines required for manufacturing purposes and/or for expansion of an existing project. Even in the letter of recommendation from the Industrial Advisor of the Office of Development Commissioner (SSI) on which the appellants have heavily relied, there is no reference to the goods imported, i.e., labelling machine and cello wrapping machine.

In view of the above, I find no merit in the appellant's claim and there is therefore no scope to interfere with the order-in-original and the appeal is rejected." 2. Briefly stated the facts of the case are that M/s. National Electronics of Calcutta, the appellants in this case, applied for registration of contract under Project Import (Registration of Contract) Regulations, 1965 for one Labelling machine and one Cello wrapping machine for substantial expansion of their existing unit. The appellant also submitted proforma invoice, confirmation of the order, SSI Registration certificate, a photocopy of letter from Development Commissioner (SSI), New Delhi regarding enhancement of capacity of the existing unit from 3 lakhs to 5 lakhs of Audio Cassettes blank/duplicate and ITC licence duly endorsed for Project Import. The appellants also informed that they have not any project report and that they have applied for registration certificate and the same has not been received by them till 30th January, 1984. On scrutiny of the documents, it was found by the Revenue that the equipments to be imported did not make an industrial plant or a part of industrial plant or project within the scope of Heading 84.66 of the Customs Tariff Act, 1975. It was alleged that these goods were not meant for the manufacture of any of the items specified under the Industries Development Regulation Act, 1951 (vide Order No. S-37-C Misc.

221/83-A(vi), dated 7-9-1983), in the circumstances it was alleged by the Revenue that the Labelling machine and the Cello wrapping machine cannot get the benefit of assessment under Chapter Heading 84.66 and ordered that the goods shall have to be assessed on merits. This order of the Dy. Collector was confirmed by the Collector (Appeals).

3. Shri N. Ramanathan, Id. Consultant appearing for the appellants submitted that the appellants are small scale industry registered by the Director of Cottage and Small Scale Industries; that their proposal for manufacture of audio cassettes/pre-recorded cassettes was approved by the Development Commissioner, New Delhi under his letter dated 15-11-1980; that a licence was granted to the appellants for import of labelling machine and Cello wrapping machine; that the licensing authorities also endorsed the said licence for project import for assessment under Heading No. 84.66 of the Customs Tariff Act, 1975; that the Dy. Collector of Customs rejected their claim for registration of the contract under Heading 84.66 on the ground that earlier the same importers had imported video cassette loader, video cassette recorder with monitor and video camera for assessment under Heading 84.66 but the claim was rejected on the ground that the equipment imported in that the case did not make a industrial plant or a part of industrial plant or project within the scope of Heading 84.66 and also on the ground that the goods proposed to be manufactured were not specified under the Industries Development Regulations Act, 1951; that they also cited a case of importation by M/s. Gramophone Company of India where similar goods were allowed under Project Import; that the Dy.

Collector's decision was a prejudicial one inasmuch as he relied on an earlier order and did not apply his mind to the present imports nor has he given any reason for rejecting their claim; that the Collector (Appeals) also erred in holding that the machines imported could not be considered as machines required for manufacturing purpose and/or for expansion of the existing project. In support of his contention, the Id. consultant cited and relied upon the judgment of the Hon'ble Madras High Court in the case of Super Recording Company Pvt. Ltd. reported in 1992 (61) E.L.T. 17, the judgment of the Tribunal in the case of D.P.S.India Pvt. Ltd. reported in 1992 (62) E.L.T. 837. Again the judgment of the Tribunal in the case of 1993 (63) E.L.T. 275 and the judgment of Calcutta High Court in the case of Asiatic Oxygen Ltd. reported in 1992 (57) E.L.T. 563 was cited and relied upon by the appellants. The Id.consultant, therefore, prayed that the lower authorities may be directed to register the appellants' contract for project import under Heading No. 84.66 and consequential relief may be granted by setting aside the impugned order.

4. Shri S.K. Tyagi, Id. JDR submitted that Project Imports (Registration of Contract) Regulations, 1965 required that these regulations shall apply to every contract referred to in Sub-heading No. 1(i) of Heading No. 84.66 of the 1st Schedule to the Customs Tariff Act, 1975. The Regulations further required: "(2) : the importer shall apply, as soon as may be after he has obtained the Import Trade Control Licence for the import of articles covered by the contract or in the case of imports made by the Central Govt., any State Govt., statutory corporation, public body or Govt. undertaking run as a joint stock company (Hereinafter referred to as a Govt. agency) as soon as clearance from the Director General of Technical Development has been obtained"; that if these Regulations are read with the requirements of Sub-heading No. 1 or Sub-heading No. 2 of Heading No. 84.66 it would be seen that the lower authorities have strictly complied with the requirements of the law laid down therein. Reiterating the findings of the lower authorities, the Id. JDR submitted that the appeal merits rejection straightaway. In support of his contention, the Id. DR cited and relied upon the decision of the Tribunal in the case of Gramophone Company India Ltd. reported in 1991 (52) E.L.T. 247.

5. Heard the submissions of both sides and considered them. The dispute before us in non-registration of a contract under the provisions of Project Imports (Registration of Contract) Regulations, 1965 read with Chapter Heading 84.66 of the Customs Tariff. Whereas the important clause of the Regulations have already been cited and reproduced in the submissions of the Departmental Representative, however, for proper appreciation of the findings of the lower authorities, Chapter 84.66 (1) is reproduced below :- (d) Auxiliary equipment, as well as all components (whether finished or not) or raw materials for the manufacture of the aforesaid items and their components, required for the initial setting up of a unit, or the substantial expansion of an existing unit, of a specified : (6) such other projects as the Central Govt. may, having regard to the economic development of the country, notify in the Official Gazette in this behalf." 6. On careful scrutiny of the various conditions for classification under Chapter Heading 84.66 of the Customs Tariff Act, 1975, we find that this Heading is applicable only if the equipment is required for the initial setting up of a unit or the substantial expansion of an existing unit of a specified : We find that admittedly there was no

project report nor the goods were required for initial setting up or substantial expansion of the projects mentioned as above or noticed as required above. In this view of the matter, we hold that the items imported did not qualify for classification under Chapter Heading 84.66 of the 1st schedule to the Customs Tariff Act, 1975.

7. We also observe that one of the requirements of the Project Imports Regulations, 1965 was that a clearance from the Director General of Technical Development was required to be obtained. From the evidence on record, we do not find that any such clearance was taken from the DGTD. However, a certificate from Development Commissioner (SSI Unit) was produced. But this certificate cannot be termed substantial compliance of the requirement of law. From the evidence on record, we also observe that there is no evidence whatsoever on record to show that the certificate given by the Development Commissioner (SSI) was required to be taken as clearance from the DGTD. 8. From the ratio of the judgments cited and relied upon by the appellants, we find that in the case of Super Recording Company, the Hon'ble Madras High Court had examined project imports under Project Imports Regulations, 1986 whereas the present case falls under Project Import Regulations, 1965 and therefore the facts in the two cases are distinguishable. Even the issue dealt with by the Hon'ble Madras High Court has no bearing on the issue before us. In the case of D.P.S. India, this Tribunal had examined the issues under Project Imports Regulations, 1965 but the issue in that case was that contract was not registered due to delay by the Customs authorities and therefore it was held that the benefit of Project Import should not be denied. However, the issues in the two cases are different and can be distinguished.

9. The issue again came up before the Tribunal in the case of CC v. Systems Data and Control Pvt. Ltd. reported in 1993 (63) E.L.T. 275. In this case though the basic issue was examined under the Project Import Regulations, 1965 yet the facts were different. The Hon'ble Calcutta High Court examined registration of project imports under the Project Imports Regulations, 1965 in the case of Asiatic Oxygen Ltd. reported in 1992 (57) E.L.T. 563. In this case also we find that the facts were different from what we are considering in the instant case. On examination of the case law cited and relied upon by the appellants, we find that the facts in those cases were different from those of the case before us and we,

therefore, hold that the cases are distinguishable.

10. The Id. DR relied on the decision of the Tribunal in the case of Gramophone Co. India Ltd. In this case, we find that the issue was different in as much as the issue was : What does the expression 'service industry' mean for purpose of Project Import Regulations, 1986 and thus the decision of the Tribunal in this case also does not support the contentions of the Deptt. Representative.

11. Having examined the various contentions raised before us and the case law cited and as discussed above, we hold that the machines imported were not a part of the project enumerated under Chapter Heading 84.66(i) of the 1st Schedule of the Customs Tariff Act, 1975.

Therefore, the lower authorities rightly refused registration of the contract. In this view of the matter, the impugned order is upheld and the appeals are accordingly rejected.

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