

Peico Electronics and Vs. Collector of Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-30-1995

Reported in : (1995)(79)ELT713Tri(Mum.)bai

Appellant : Peico Electronics and

Respondent : Collector of Cus.

Judgement :

1. This appeal is directed against the order-in-Appeal No. 1008/90 BCH, dated 5-7-1990 of the Collector of Customs (Appeals), Bombay, confirming the Order-in-Original No. S/10-226/89IV, dated 4-12-1990 of Asst. Collector of Customs, Bombay, ordering confiscation of the goods imported by the appellants with option to pay redemption fine of Rs. 5600/-.

2. The appellants imported a case containing 65 kgs of tool alloy steel valued at Rs. 5579/- and sought clearance under OGL Appx 6(5) of AM 1988-91. Clearance was claimed under OGL Licence No. 5/88 dated 30-3-1988. As per the general conditions of the import under OGL, vide para 31 of Appd 6, the appellants were required to register the contract with the competent authority named therein within the specified period and it appears that the appellants had not complied with the said condition. The clearance was therefore objected to. The importers however contended that they have complied with the requirement of para 7(1) of OGL No. 5/88 and that by virtue thereof they were not required to comply with the requirement of para 31 of the general condition of OGL. The same was not accepted and therefore the goods were held liable to confiscation and impugned

order came to be passed, which on appeal was confirmed by the Collector (Appeals).

3. Shri D.S. Moghe, the authorised representative of the appellants submits that the items were imported for R & D purpose which was permissible under the OGL licence No. 5/88 and the condition laid down therein have been duly complied with. In his submission, therefore, they were not supposed to get their contracts otherwise registered as contained in para 31 of the general condition. As an alternate submission he submits that in any case the redemption fine to the extent of 100% of the CIF value is not warranted firstly because their import is in conformity with the OGL No. 5/90 and secondly they are actual users and no profit element is involved.

4. Shri H.R. Krishnamurthy, the Ld. JDR however submits that the item imported falls within Appx 6 and even otherwise the general conditions reproduced in Appx 6 cover up all imports under all OGL licence and there is nothing in the OGL licence No. 5/90 or elsewhere to show that those conditions are not required to be complied with if an import is under specific OGL. In his submission therefore the import has rightly been held as unauthorised.

5. Considering the submissions made and going through the records and considering the facts, the conditions incorporated in Appx 6 are the conditions covering imports under OGL. They do not say that they will apply to only specific OGL and not to all the OGL issued during the relevant policy period. Further, para 31 is a requirement which is a pre-importation one, whereas condition No. 7(1) of the OGL No. 5 of 1990 is a post-importation one. It therefore cannot be said that the compliance of the said condition under OGL 5/88 would automatically mean as compliance condition of para 31 of the general condition or that general conditions would not apply to OGL No. 5/88. The arguments advanced by the appellants therefore do not appear to be sustainable and are therefore rejected. The order of confiscation for non-compliance with the requirement of para 31 of the general condition is therefore sustained. However, it appears that the redemption fine to the extent of 100% of the CEF value in such circumstances may not be justified. Contravention by the appellants will not involve in any revenue loss and the

registration is basically meant for the purpose of statistic as to the import of specific items. Appellants had imported the item for R & D purposes and they are actual users with no profit motive involved. In the circumstances, while sustaining the order of confiscation and imposition of redemption fine, the fine is reduced to from Rs. 5600/- to Rs. 1500/- (Rupees one thousand five hundred only), consequential relief to follow.

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