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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-26-1995

Reported in : (1995)LC392Tri(Delhi)

Appellant : Collector of Customs

Respondent : Pfoston Colour Processing Lab

Judgement :

1. This is a Revenue appeal against the order passed by the Collector (Appeals), Bombay, allowing the importer's claim for the benefit of assessment of imported item namely, Film Processor Model No. QSF-B50-3 under Heading 84.66 as "project import". The original authority had rejected the appellant's claim on the ground that the import consists of one film processor and not a complete minilab. The appellants have produced industrial licence to show that the items had been allowed for manufacture by the Director of Industries, Bombay. Industrial Licence is for manufacture of printing rolls, developing rolls, X-Ray lith films, developers etc. yet the Collector (Appeals) held that the item is required to be considered for the concessional rate of duty under the "Project Import" in view of the recommendatory letter dated 2-5-1985 issued by the said authorities. The Revenue is contending in this appeal that the assessment under Heading 84.66 of CTA, 1975 can be considered only in respect of complete minilab system comprising of processor, developing, printing, equipment and not to a processor by itself. Further it is stated that the benefit of concessional rate of duty can be extended in case of initial set up or substantial expansion and in the present case

the imported item does not help in increasing in capacity of production as envisaged. The Revenue has challenged the inference of the Collector (Appeals) that the film processor will add to the substantial expansion of the existing unit is not correct, as minilab system is a complete integrated single unit which is computerised on its programme and therefore, a mere addition of the film processor cannot add to its existing capacity. It is also stated that the recom-mendation of sponsoring authority for allowing Registration of contract will not entitle the importer for registration of contract under the said heading as these authorities do not have any jurisdiction, in so far as, the registration of contract for assessment under Heading 84.66 of CTA, 1975 is concerned.

2. Supporting the grounds of appellants, the Learned DR submitted that the Collector has erred in proceeding to grant the benefit merely on the basis of a letter issued by the sponsoring authority without considering the basic question as to whether on mere addition of the film processor will add to the substantial expansion of the existing unit. He submitted that a similar question came up for hearng before the Tribunal and the Tribunal negatived the importer's contention as in the following cases :Collector of Customs v. Vijayawada Offset Printers [1995 (78) E.L.T. 516]Collector of Customs v. Sri Sarathi Studios (P) Ltd. [1994 (73) E.L.T. 382]Toyo Engineering India Ltd. v. Collector of Customs, [1994 (70) E.L.T. 769]Collector of Customs v. Colomma Lab. Pvt. Ltd. [1994 (70) E.L.T. 93].

3. The Learned Counsel submitted that the impugned order is sustainable and the letter granted by the DGTD cannot be challenged by the Customs Authorities. He submitted that the installation of the item will always bring in increase in production. Therefore, the ground taken by the Revenue is not sustainable. He submitted that there is no dispute on the fact of increase capacity and substantial increase in production on installation of this item. He also submitted that the citations relied by the Learned DR are distinguishable inasmuch as that the ratio of the judgments pertains to the period after the amendment of Heading 84.66, while the present case pertains to pre-amend-ment and, therefore, ratio of the judgment rendered in the case of Satish Kumar Goyal v. Collector of Customs as reported in 1985 (21) E.L.T. 873 should be followed. The Learned Counsel further submitted that the item has been mentioned in the initial contract.

4. Countering the arguments of Learned Counsel, the Learned DR submitted that the terms of project import prior and after the amendment of the tariff heading has remained the same. He also submitted that the party had not indicated the item in their contract for initial setting up of the project and hence the item will not fall within the category of initial setting up of the project and, therefore, it does not satisfy the terms of Heading 84.66 of the CTA, 1975.

5. We have carefully considered the submissions made by both the sides and have perused the citations. The Tribunal has allowed the Collector's appeals in the judgments cited by the Learned DR. In all the cases, the Tribunal has held that the Import of individual item will not satisfy the terms and conditions laid down in project import as noted in the Heading 84.66. The Learned Counsel relied on the judgment in the case of Satish Kumar Goyal (supra), but we find that this judgment is not applicable in the present case, as the appellants had imported fully automatic and computerised equipments for developing of colour films, printing, enlarging and processing of colour films in terms of licence granted by Chief Controller. The Assistant Collector refused the registration on the ground that the Heading 84.66 related to machinery including films, apparatus, appliances etc. for initial setting up of the plant or substantial expansion of the existing unit of a specified industrial plant. The Tribunal negatived his contention and held that the entire project itself was to be considered for duty concession as it was for initial setitng up of the industry. In this case, the appellants had already imported the entire project and had already set up the project by taking the concession. Subsequently they imported a single item namely, "film processor". The Collector (Appeals) allowed the same, merely on the basis of recommendatory letter without going into the terms of Heading 84.66. Therefore, we are required to see as to whether the film processor comes within the ambit of a complete minilab system comprising of processor developing, printing equipment as a "complete minilab" for initial setting up of the project. The appellants had already imported the complete project and they had set up the minilab and, therefore, a single film processor cannot be considered as a complete minilab for initial setting up of a project import, in view of the decided cases.

6. In the case of Vijayawada Offset Printer (supra), the importer claimed registration as project imports for camera only, on the basis of purchase order. It was held that existence of formal contract is necessary before registration with the Customs House for claiming concession under Heading 84.66. The importer had sought registration only on the basis of purchase order and this was held as not satisfactory fulfilment of the condition under Heading 84.66.Collector of Customs v. Sri Sarathi Studios (P) Ltd. (supra) the import of camera for shooting of films was held to be not entitled to the benefit of the Heading 84.66. In the present case, the appellants have already set up the project by claiming concession after due registration of the contract. The Bench also relied on the judgement rendered in the case of Sujatha International v. Collector of Customs, as reported in 1989 (42) E.L.T. 413, wherein the Tribunal has held that the order placed, acceptance, Letter of Credit etc. would not be taken as a contract, as contemplated in Heading 84.66 and that there should be some sort of formal contract. It was also held that the camera was not relatable to any particular project. In the present case there is no separate registration of contract obtained for the imported item and, therefore, the ruling of Toyo Engineering India Ltd. (supra) is also applicable in the present case.National Newsprint & Paper Mills Ltd. v. Collector of Customs, as reported in 1987 (32) E.L.T. 153 the Tribunal in paras 15 and 18 have held that "the wordings of Tariff Heading No. 84.66 as it stood at the material time, it will be seen that it relates to machinery etc. : "required for the initial setting up of a unit, or the substantial expansion of an existing unit". It has been held that what is contemplated is the substantial expansion of a unit, and not the substantial expansion of production of a unit. It has been held that the intention behind this wording can be gauged from the reference to "initial setting up of a unit". Further, it has been observed that what this contemplated was that a new unit should be set up and construed harmoniously, it has been held that it would mean that it would apply to a case where here was already a unit, but an addition was made on such a scale and of such a nature as would be comparable to the setting up of a new unit. Thus, it has been held that if there were already two assembly lines, the setting up of a third assembly line would be in a nature of "a substantial expansion of an existing unit". This judgment only clarifies the position and applying the ratio we have to hold that the item imported was only for substantial expansion of

production of a unit and not for substantial expansion of a unit inasmuch as there has been no setting up of a new unit, and therefore, the plea of the Learned Consultant is required to be rejected and the Revenue's plea in terms of the judgments cited by the Learned DR is required to be accepted. Thus, the appeal is allowed.