Vijay Gupta Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-01-1996

Reported in : (1996)(65)LC106Tri(Delhi)

Judge : U Bhat, V T K.S.

Appellant : Vijay Gupta

Respondent : Cc

Judgement :

1. The common appellant imported two consignments of sub-assemblies and transformers for actual use as components of VCR/VCP/TV sets on the strength of an automatic licence dated 17.10.1984. The Dy. Collector held that the sub-assemblies were mounted or loaded printed circuit boards (P.C.B.) and covered by Appendix 2B for Import Policy for April and May, 1984-85 and not sub-assemblies mentioned in Item 576 of Appendix 3A of the Policy and therefore, not covered by the automatic licence and imports thereof were unauthorised. It was held that value determined after enhancement exceeded the limit prescribed in the licence. Thus, goods were ordered to be confiscated under Clauses (d), (1) and (m) of Section 111 of the Customs Act, 1962 fixing redemption fine of Rs. 1,10,000/- in one case and Rs. 60,000/- in another case and personal penalty was imposed in each of the two cases under Section 111(d) of the Act. In appeal, the Collector (Appeals) confirmed the finding regarding the non-coverage of the licence but set aside the finding regarding enhancement of value and remanded the matters for fresh determination of value. The common order passed in the two appeals is now

challenged. We are told that after remand, the value has not yet been redetermined. The only question which arises for consideration relates to the licence coverage.

2. Admittedly, the appellant is an actual user of the imported goods.

The two Bills of Entry bear Nos. 4593 and 4594 and in each B/E, 125 sets of sub-assemblies as also 125 transformers were imported. The finding is that sub-assemblies are nothing but mounted or loaded printed circuit boards (PCBs). It is admitted that the appellant had an automatic licence. The licence specifically allows import of items as permissible under Appendix 4, Part-A of the Import Policy for AM 1984-85 required for manufacture of VCR/VCP/Colour Monitor.

(ii) Double sided printed circuit boards with or without plated through hole (PTH) 4. Chapter 6 of the Policy deals with import of raw materials, components and spares by actual users (Industrial). Automatic licence is dealt with in paragraph 25 onwards. An automatic licence is intended to provide the actual user (industrial) with his annual requirements pf raw materials, components and consumables covered by Appendix 4. The application for licence should be accompanied by a Consumption Certificate in the prescribed proforma showing the consumption of imported raw materials, components or consumables appearing in Appendix 4, for any of the two previous financial years as he may choose. The actual user is bound to abide by the terms and conditions of phased manufacturing programme and furnish to the authorities half-yearly returns of the items imported, their quantity and value. The value of each automatic licence would be determined on the basis indicated in paragraph 29. Clause (a) states full c.i.f. value of the Consumption certificate in respect of the imported raw materials, components and consumables covered by Appendix 4, Part-A plus 10 per cent thereof.

Sub-clause (e) refers to 'restricted' spares. According to para 31(1), an automatic licence is valid for import of: (c) other than iron and steel items of raw materials, components and consumables appearing in Appendix 4A, and (d) Restricted spares, i.e. those appearing in Appendices 2B, 3A and 10 within the respective value limits for each such set of items specified in the licence.

Under Para 31(2), the automatic licence will be valid, within its overall value, for import of any item appearing in Appendix 3 (but not Appendix 2), required by the licensee for use as raw materials, components and consumables provided the import of a single such item does not exceed Rs. 2 lakhs in c.i.f. value and total value of all items imported does not exceed 10 per cent of the overall value of the licence (other than value set apart for import of 'restricted' spares).

5. The Assistant Collector and Collector (Appeals) held that since item 100 in Appendix 2B is populated/loaded/stuffed PCBs, the same cannot be imported by virtue of paragraph 31 of Chapter 6 of the policy read with relevant entries either in Appendix 3A or Appendix 4A.6. The automatic licence issued to the appellant enables import of "items as permissible under Appendix 4 Part-A of AM 85 Policy Book required for manufacture of above mentioned end-use". The end-use is mentioned as VCR/VCP/Colour Monitor. Against Col. No. 4 referring to SI. Number Part of ITC Schedule, the licence mentions "Appendix 4 Part-A of AM 85 Policy Book". According to para 31.1 of Policy Book, an automatic licence will be valid for import of item falling in 4 categories. The third category refers to components and consumables appearing in Appendix 4 Part-A. It is therefore clear that the licence entitles the appellant to import only components and consumables appearing in Appendix 4, Part-A. The relevant item in Appendix 4, Part-A is sub-item (14) of Item 489 which mentions "printed circuit boards other than those in Appendix 3, Part-A. Sub-item (12) of Item 573 of Appendix 3, Part-A mentions "(i) Single-sided printed circuit boards (ii) Double-sided printed circuit boards with or without plated through hole (PTH)". Item 100 of Appendix 2, Part-B mentions "Populated/loaded stuffed printed circuit boards". Apparently, it looks as if that same items have been repeated in 3 Schedules. That being so, one has to look into the interpretation clause occurring in Chapter 22 of the Policy Book.

7. Paragraph 242 lays down principles regarding interpretation of entires for various appendices as well as imports under OGL. Principle (c) reads thus: an item with a specific description in Appendix 2, Part-B, 3 Part-A or 4 Part-A will prevail over an item with a generic description in any of these Appendices.

an item with a generic description in Appendix 2, Part-B and 3 Part-A will prevail over an item with a generic description in Appendix 4, Part-A.The description "printed circuit boards" occurring in sub-item (14) of Item 489 of Appendix 4, Part-A is a generic description. The description "single-sided printed circuit boards" and "double-sided printed circuit boards" occurring in sub-item (12) of Item 573 of Appendix 3, Part-A are also generic descriptions. The description "Populated/loaded stuffed printed circuit boards" occurring in Item 100 of Appendix 2, Part-B is a specific description in comparison to the description "printed circuit boards" occurring in sub-item (14) of Item 489 of Appendix 4, Part-A. By virtue of principle (c) of paragraph 242 an item with a specific description in Appendix 2, Part-B or Appendix 3, Part-A or Appendix 4, Part-A will prevail over an item with a generic description in any of those appendices. The specific description in Appendix 2, Part-B will prevail over an item with a generic description in Appendix 4, Part-A. We are conscious of incongruity in the description given in Item 489(14) of Appendix 4, Part-A as "printed circuit boards other than those in Appendix 3, Part-A" since Appendix 3, Part-A also takes in printed circuit boards without any qualification but is with added description "single sided" or "double sided". However, going by principle (c) as well as principle (d) in paragraph 242 of the Policy Book, as well as the specific exclusion in Item 489(14) of Appendix 4, Part-A, printed circuit boards cannot be imported by virtue of inclusion in Appendix 4, Part-A.8. To get over this difficulty caused by the Interpretation Rules, Id.

Counsel for the appellant placed reliance on the decision of the Tribunal in Atari (India) Electronics v. Collector of Customs which related to an import governed by Import Policy 1985-88. The appellant was an actual user of loaded circuit boards and imported such goods under OGL claiming entitlement under SI. Number 565(15) of Appendix 6, List 8, Part-I of that Policy. The item referred to "printed circuit boards other than those in Appendix 3, Part-A".

Item 607(18) of Appendix 3, Part-A took in single-sided and double-sided printed circuit boards. Item 113 of Appendix 2, Part-B took in populated/loaded/stuffed printed circuit boards. The Dy.

Collector and Collector (Appeals) held that loaded printed circuit boards were covered by SI. Number 113 of Appendix 2, Part-B of the Policy and therefore import could be made only on the policy import licence and not under OGL. The Tribunal noticed incongruity in the description in the three different appendices. The Tribunal also referred to the interpretation clause in paragraph 21 (c) of that Policy which provided that on item with a specific description in Appendix 2, Part-B or Appendix 3, Part-A will prevail over an item with a generic description in any of these appendices and indicated that the expression on "these appendices" would obviously mean Appendix 3, Part-A and not of appendices. Accordingly, it was held that Appendix 2, Part-B could not prevail over entries in Appendix 6, List 8, Part-I.The Tribunal referred to Interpretation Clause 21(f) of that Policy which provided that any item in Appendices 2, 3, 5 or 8 with a specific or a generic description, will preclude the eligibility to its import under OGL, except where the policy allows this clearly. On the basis of this clause it was held that Appendix 3, Part-A specifically allowed import of printed circuit boards and therefore it fell within the exception in Interpretation Clause 21 (f). Such is not the position in the present case. Atari (India) Electronics case related to claim of eligibility to import under OGL while the present case arises on an automatic licence. The provisions relating to the two are different.

The provision in the policy under consideration in this case which is similar to Clause 21 (f) of the Policy 1985-88 is 242(f) which also relates only import under OGL and not import under automatic licence.

Therefore, the decision in Atari (India) Electronics cases is not helpful to the appellant. In the present case the principle in para 242(c) as also 242(d) clearly bar the import under automatic licence of any item with generic description in Appendix 4, Part-A which is also covered by item with specific descriptions or generic description in Appendix 2, Part-B and Appendix 3, Part-A. We, therefore, hold that the loaded printed circuit boards imported by the appellant are not covered by the automatic licence issued to the appellant.

9. It is next contended that even if that be so the appellant is entitled to import these items as "restricted" spares by virtue of paragraph 31(1) of the Policy AM

1985-88. The fourth item indicated to be valid for an automatic licence in para 31(1) is "restricted" spares, that is, those appearing in Appendix 2, Part-B, Appendix 5, Part-A and Appendix 10 within the respective value limits for each such set of items specified in the licence. We have indicated already that the appellant's licence refers only to items under Appendix 4, Part-A. The licence does not specify the value limit for import of restricted spares occurring in Appendix 2, Part-B or Appendix 3, Part-A. This provision in 31(1) is only enabling provision, enabling an actual user to seek a licence for import of such restricted spares also under automatic licence and enabling the licensing authority to grant the licence. A copy of the appellant's application is not before us.

Therefore, we are not aware that appellant had requested that the automatic licence should cover import of restricted spares appearing in Appendix 2, Part-B or Appendix 3, Part-A. The original automatic licence shown to us by the Id. Counsel refers to only items of Appendix 4, Part-A and does not refer to Appendix 2, Part-B or Appendix 3, Part-A and also does not set out the value limit either for items in Appendix 2, Part-B or Appendix 3, Part-A. We, therefore, hold that the automatic licence in this case does not enable the appellant to import printed circuit boards as "restricted" spares appearing in Appendix 2, Part-B or Appendix 3, Part-A.