Collector of Customs Vs. Ind Chem Electronics

Collector of Customs Vs. Ind Chem Electronics

SooperKanoon Citation : sooperkanoon.com/9863

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-08-1996

Reported in : (1996)(87)ELT66TriDel

Appellant : Collector of Customs

Respondent : ind Chem Electronics

Judgement :

1. This is a revenue appeal alongwith Cross Objection filed by the importer. The Collector (Appeals), Madras by his Order dated 22-1-1987 has passed the following order : "A simultaneous and close reading of the Notification No. 235/83-Cus., dated 18-8-1983, No. 80/85-Cus., dated 17-3-1985 and Customs Notification 172/85, dated 24-5-1985 would show that the intention of the Government is to accord the same concessional assessment to parts imported for the manufacture of the electronic medical equipments as is applicable to the main equipment. Apart from the common understanding that the conditions stipulated in the Notification No. 80/85-Cus., dated 17-3-1985 are applicable only to the complete items mentioned thereunder, the absence of specific mention in Notification No. 172/85-Cus., dated 24-5-1985 about the conditions stipulated in "any relevant notification" lends support to the appellants' plea that the impugned goods being parts are not governed by the condition stipulated in Customs Notification 80/85, dated 17-3-1985".

2. In the appeal, the revenue has stated that the goods imported namely "SECTOR TRANSDUCERS are "parts" for the manufacture of a Medical

Electronic equipment viz. Microprocessor based Ultra Sound Imaging Body Sector Scanner. The rate of basic Customs duty and additional duty under Notification 235/83 is "as is leviable on the said equipment when imported complete". The relevant auxiliary duty for the "parts" imported for the purpose of manufacture of the said medical electronic equipment is, as per Notification 172/85, "as is leviable on the said equipment viz., Scanner when imported complete".

It is stated that the said main equipment i.e., the Scanner, is covered by Notification 80/85, but the concession under this notification is subject to certain conditions viz., subject to production of N.M.I, and D.E. Certificates from the respective, competent authorities. It is stated that the Notification 235/83 and 172/85 which duly cover the "parts" imported for the purpose of manufacture of a said electronic equipment, speaks of rate of duty (basic, auxiliary and additional duties) as is leviable on the said equipment when imported complete, cannot be taken to cover Notification 80/85, which is conditional. It is stated that in other words, the rate of duty on main equipment must be one as is available under a general exemption, without any condition attached to such a concession. It is stated that a Scanner (of the types to be manufactured by the importers/specified in the Notification No. 80/85) is imported; a mere import will not earn the 'scanner' the concession envisaged under 80/85. Only on production of the two certificates, the exemption would become applicable even to the SCANNER. When such is the case in respect of the main equipment itself, impugned item which are "parts" will not attract the concession of 80/85. It is stated that even a scanner imported, if not covered by the two certificates from the [respective] competent authorities, would attract duty under Notification 217/77 read with the slab-rate notification for auxiliary duty with additional duty under Item 68 CET.It is further stated that the "parts" for the manufacture of a Scanner are, therefore, not eligible for the concession sought for and the appellate authority has erred in extending such a concession which is legally not due to "parts".

3. We have heard Mrs. R. Pant, ld. SDR for the revenue and Shri R.Sashidharan, ld. Advocate for the importer. Ld. SDR argued on the basis of the ground made out in the appeal memo. Ld. Advocate submitted that the Notification No. 80/85 grants exemption to the main equipment for basic and additional duty of Customs, while

Notification No.235/83-Cus., dated 18-8-1983 is for "parts" covering both for concessional rate of basic duty and for additional duty. The clause (b) of the Notification states that the rate of duty for additional duty is charged as per the rate fixed for the main equipment. It is his further contention that the Notification No. 80/85-Cus., dated 17-3-1985 grants exemption from duty on certain conditions. Those conditions in Notification No. 80/85-Cus. are for the purpose of granting exemption to main equipment only. Thus its conditions cannot be read while interpreting Notification No. 235/83; for the reason, that so long as the main equipment is exempted, no additional duty will also be leviable to be charged on "parts". Notification No. 235/83-Cus., dated 18-8-1983 should be read independently as it does not state that the exemption is on fulfilment of conditions laid down under Notification No. 80/85-Cus., but merely refers to rate of duty. It is also his submission that the importer has satisfied the condition of Notification No. 235/83-Cus., dated 18-8-1983 it is his submission that the question of importing main equipment on conditions as laid down under Notification No. 80/85-Cus., dated 17-3-1985 is not a requirement for grant of concession for "parts" under Notification No. 235/83-Cus., dated 18-8-1983, which covers the "parts" only. It is his submission that if the terms of Notification No. 80/85 is applied for interpreting Notification No. 235/83, then, the Notification No. 235/83 would become redundant. The legislature could not have intended to issue such a Notification, leaving on ambiguity as regards its condition. The Notification No. 235/83 merely states that the rate of duty would be as per the rate of the 'main equipment'. So long the 'main equipment' is exempted, then the exemption should be granted to "parts", without applying the conditions laid down in that Notification. It is his submission that the object of introducing the Clause (b), the Notification No. 235/83-Cus., is to grant the benefit and not to deny the same.

4. Ld. DR countering the arguments of the ld. Advocate. Notification No. 235/83-Cus., dated 18-8-1983 refers to duty as chargeable to 'main equipment'. The main equipment has been granted the benefit of concessional rate of duty under fulfilment of conditions. The benefit cannot be applied to the Notification No. 235/83-Cus., unless such conditions are fulfilled. It is her submission that Notification No.271/77 is independent notification, which automatically applied to "parts". Ld. Advocate pointed out that the Notification No. 271/77 is only for basic

duty and not for additional duty and hence it has no applicability.

5. We have carefully considered the submissions made by both the sides and perused the grounds made by the revenue. On a careful consideration, we do not find any merit in this appeal. The ld.Collector has rightly appreciated and has rightly interpreted the scope of both the notifications in the present case. Notification No.235/83-Cus., dated 18-8-1983 as amended by Notification No. 285/83, dated 3-10-1983 grants exemption to parts; "other than parts containing thermionic valves or transistors of simiar semiconductor devices or light emitting diodes or electronic microcircuits or capacitors other than paper capacitors" required for the manufacture of medical electronic equipment falling under Chapter 85 or Chapter 90 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India and proved to the satisfaction of the Assistant Collector of Customs to be so required for such manufacture from - (a) so much of that portion of the duty of customs leviable thereon which is specified in the said First Schedule as is in excess of the amount calculated at the rate applicable to the said equipment when imported complete; and (b) so much of that portion of the additional duty leviable thereon under Section 3 of the second mentioned Act, as is in excess of the amount calculated at the rate applicable to the said equipment when imported complete, (i) an officer not lower in rank than a Joint Director in the Department of Electronics of the Government of India or a Joint Director in the Directorate of Industries of a State or an Additional Industrial Adviser in the Directorate General of Technical Development of the Government of India, as the case may be, is satisfied that the goods in question are required for the purpose specified above and certifies to this effect and recommends grant of the above exemption : Provided that this condition shall not apply in the case of goods imported against the following types of import licences, namely :- (ii) the importer shall, by the execution of a bond in such form and for such sum as may be specified by the Asstt. Collector of Customs bind himself, to pay, on demand, in respect of such parts as are not proved to the satisfaction of the Asstt. Collector of Customs to have been used for the aforesaid purpose, an amount equal to the difference between the duty leviable on such parts but for the exemption contained herein and that already paid at the time of importation : Provided that nothing contained in this notification shall affect the exemption granted under any other

notification of the Government of India for the time being in force, from the duty of customs specified in the said First Schedule in respect of the parts referred to in this notification".

While Notification No. 80/85-Cus., dated 17-3-1985 grants exemption to medical equipment falling under Chapter 84 or Chapter 85 or 90 specified in Column (2) of the Table hereto annexed, when imported into India from...

(a) so much of that portion of the duty of customs leviable thereon which is specified in the said First Schedule as is in excess of the amount calculated at the rate of 40 per cent ad valorem; and (b) the whole of the additional duty leviable thereon under Section 3 of the second mentioned Act.

(a) The importer produces a certificate in each case from the Directorate General of Technical Development to the effect that the goods in question are not manufactured in India.

(b) The importer produces a certificate in each case from the Directorate General of Health Services of the Government of India or from the Ministry of Health and Family Welfare of the Government of India to the effect that the import of the equipment is necessary and recommending part of the above exemption.

The contention of the revenue is that the Notification No. 80/85 applies only on fulfilment of the terms of the conditions specified above. That the importers have to show that the main equipment is not manufactured in India by producing a certificate from the DGTD. Besides the certificate from DGHS or Ministry of Health and Family Welfare, Govt. of India to the effect that the import of equipment is necessary and recommending part of the above exemption. It is the revenue's contention that the certificate produced by the importer does not satisfy the terms of Notification No. 80/85 and hence they should be denied the benefit of the exemption from whole of additional duty leviable thereon. As has been pointed out by the ld. Advocate, the Notification No. 235/83-Cus. as amended by 285/83, dated 3-10-1983 does not use the words "read with relevant notification for the time being in force" and also "subject to the conditions specified in the Notification No. 80/85-Cus.". We notice that these words have been stated in Notification No.

80/85-Cus., dated [17-3-1985], which deals with auxiliary duty. Therefore, the conditions laid down in Notification No. 80/85-Cus., dated 17-3-1985 pertains only to medical equipment and not to parts. For granting exemption to parts, the condition laid down in Notification No. 235/83, dated 18-8-1983 is required to be fulfilled. The condition therein are to the effect that they are required to produce the certificate from the authorities stated therein. That has been satisfied in the present case. Therefore, the concession which is available on a main equipment being imported for additional duty, that concession is required to be extended to "parts" also; on such "parts" fulfilling the conditions stated by its own exemption Notification No. 285/83, dated 3-10-1983. If this interpretation is not placed for then the notification granting exemption to "parts" would become redundant.

6. The words "as [is] in excess of the amount calculated at the rate applicable to the said equipment when imported complete" appearing in Clause (b) of Notification No. 235/83-Cus., does not mean that the conditions laid down for qualifying for exemption for 'main equipment' is required to be fulfilled here also. It merely refers to the rate of duty as is applicable to the main equipment when imported complete. We cannot read the Notification by adding or subtracting words. When the words are clear and a clear meaning can be derived, no further deductions are required by supplying words or adding words, to giving meaning to the Notification. It is relevant to refer to the Notification No. 172/85-Cus., dated 24-5-1985 covering auxiliary duty for the same 'parts'. This Notification states that the benefit would be "read with any relevant Notification for the time being in force, on the said equipment when imported complete, subject to the conditions specified - the Notification of the Government in the Ministry of Finance (Department of Revenue), No. 235 Customs, dated 18th August, 1983, is amended from time to time." These words are not to be seen in the Notification No. 235/83-Cus., which is for Basic duty and additional duty.Vishal Electronics Pvt. Ltd. v. Union of India as reported in 1989 (44) E.L.T. 420, the Hon'ble Bombay High Court held that Sub-section (1) of Section 25 of Customs Act, the Central Government must set out in the Notification thereunder the "goods of any specified description" which are exempted from Customs duty. The Court observed that it would, therefore, be impermissible to read into an exemption Notification under Section 25 goods which are not, in fact, specified therein. This is in accord with the general principle of

construing an exemption Notification. It cannot be read as conferring a benefit upon goods or persons not described therein. It further held that it must be read as covering only such goods of persons as are described therein. The Hon'ble High Court further held in para 10 as follows : "10. The words "rate of duty applicable to" in Heading No. 90.02 can, I think, be read as referring only to rate of duty specified in other headings in the First Schedule to the Customs Tariff Act. The words cannot be read as meaning the rate of duty which, from time to time, is leviable, having regard to an exemption, if any, given under the provisions of Section 25." 8. Therefore, we have to hold that condition, which are specific to one notification cannot be read to another Notification, so long as the exemption Notification itself states that the conditions are subject to the fulfilment of the other Notification.