

Titan Medical Systems Pvt. Ltd. vs Collector Of Customs on 12 November, 2002

Equivalent citations: 2003(87)ECC13, 2003(151)ELT254(SC), JT2002(10)SC431, (2003)9SCC133, AIRONLINE 2002 SC 178, 2003 (9) SCC 133, (2003) 151 ELT 254, (2003) 110 ECR 661

Bench: S.N. Variava, B.N. Agrawal

ORDER

1. These appeals are against the order dated 14.3.1995 passed by the Customs, Excise and Gold (Control) Appellate Tribunal (for short, CEGAT). Briefly stated, the facts are as follows:-

2. The appellant in civil appeal No. 5653 of 1995 i.e. M/s. Nicolian Brothers applied for an advance licence which was granted to them on 27.12.1988. The advance licence was for import of certain components for manufacture of ultrasound scanners (ten numbers of combison-320-5 spec. No. 1 and thirty five numbers of combison-320-5 spec. No. 2) which were then to be exported. The appellants in civil appeal No. 4693 of 1995 i.e. M/s. Titan Medical Systems Pvt. Ltd, were shown as supporting manufacturer.

3. By exemption notification No. 116 of 1988, certain goods, which were imported into India against an advance licence for the purpose of manufacture, in execution of an export order, were exempted from duty of customs. M/s. Nicolian Brothers imported certain components into India vide bill of entry dated 25th March, 1989. They then exported, out of India, forty five ultrasound scanners (ten of which were of specification No. 1 and thirty five of the specification No. 2). The customs authorities (respondents) permitted them to export the said scanners, allowed the benefit of exemption notification and cancelled the bond which had been executed by M/s. Nicolian Brothers.

4. On 6th November, 1990, a common show cause notice came to be issued to the appellants in both the matters. By this notice, the appellants were called upon to show cause as to why duty and penalty be not levied on them for not having complied with the conditions of the exemption notification. The appellants filed their reply to the show cause notice. The collector of customs, by his order dated 18.2.1993 levied duty and penalty on M/s. Nicolian Brothers and penalty on M/s. Titan Medical Systems Pvt. Ltd. The appellants filed separate appeals before CEGAT. The CEGAT has, by the impugned order, dismissed these appeals but reduced the penalty imposed on M/s. Nicolian Brothers to Rs. five lakhs and that imposed on M/s. Titan Medical Systems Pvt. Ltd. to Rs. two lakhs.

5. The collector as well as CEGAT have held that the appellant - M/s. Nicolian Brothers had made a misrepresentation to the licensing authority and that licence had been obtained on the basis of such misrepresentation. The misrepresentation alleged is that in their application they had indicated that they would use indigenous components of the value of Rs. 2,32,69,200/- and that labour, packing

and other charges would be to an extent of Rs. 2,07,83,447/-, whereas in actual facts they used components only to the extent of Rs. 8 lakhs and paid approximately only Rs. 5 lakhs towards labour charges. It is also held that neither M/s. Nicolian Brothers nor M/s. Titan Medical Systems Pvt. Ltd. had undertaken any manufacturing activity at all.

6. We have heard the parties at great length. We have perused the exemption notification, the duty exemption scheme and the relevant portions of the import policy. We have also perused the application for licence and the licence which had been granted to the parties.

7. The relevant portion of paragraph 219 of the duty exemption scheme reads as follows :-

"219 (1) The objective of the scheme is to make available to the registered exporters the necessary inputs for export production at international prices without payment of customs duty so as to make the exports competitive in the international market. The scheme covers three categories of licences - (1) Advance Licences, (2) Intermediate Advance Licences and (3) Special Imprest Licences. The basis and conditions on which these three categories of licences are issued under this scheme vary and licences issued under one category, therefore, cannot be mixed up with the other. Imports made against a licence granted under this scheme will be eligible for customs duty exemption as per the relevant customs notifications issued in this regard. Applications for grant for licences under these schemes where the customs duty exemption involved is less than Rs. 10,000 will not be entertained. A licence issued under this scheme to a registered exporter will be subject to actual user conditions. Exempt materials imported by a registered exporter, when given to supporting manufacturers for production as prescribed in the scheme, will also be subject to actual user conditions. Licences issued under this scheme will have both quantity and value as limiting factors."

8. Paragraph 221 which deals with eligibility reads as under-

"221 (1) Licences may be issued under this scheme only if (i) the registered exporters hold valid export orders in their own names; and (ii) are able to realise foreign exchange in their own names for the products proposed to be exported. In addition, the conversion of raw materials etc. into the resultant/intermediate products must involve substantial manufacturing activities."

9. The relevant portions of the exemption notification read as under-

"In exercise of the powers conferred by subsection (1) of Section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the government of India in the ministry of finance (department of revenue) No. 44/87-customs [C. S. R. 101 (E)] dated the 19th February, 1987, the central government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods imported into India against an advance licence issued under the imports (control) order, 1955, being

materials required to be imported for the purpose of manufacture of products (hereinafter referred to as the resultant products) or replenishment of materials used in the manufacture of the resultant products, or both, or for export as mandatory spares alongwith the resultant products, for execution of one or more export orders, from the whole of the duty of customs leviable thereon which is specified in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty leviable thereon under Section 3 of the said Customs Tariff Act, subject to the following conditions, namely:-.....

c. the goods corresponding to the resultant products and the mandatory spares, in respect of value, quantity, description, quality and technical characteristics, as specified in part of the said certificate or such extended period as may be granted by the licensing authority or the committee;

.....

vii. "Mandatory spares" means parts of the resultant product which are to be compulsorily supplied as spares as per the relevant export order or contract for substitution if it becomes faulty or worn out;

viii. "Materials" means goods which are raw materials, components, intermediate products or consumables used in the manufacture of resultant products and their packings, or mandatory spares to be exported alongwith the resultant products:"

10. CEGAT has laid great emphasis on the words "substantial manufacturing activity" appearing in para 221 set out above. In the opinion of the CEGAT, the term "substantial manufacturing activity" must necessarily mean that not just the resultant product (which has to be exported) but a substantial amount of components or materials which go into making of the resultant product must also be manufactured by the party. It was submitted that the appellants should have manufactured components to the extent as in their application that the components i.e. to the tune of Rs. 2,32,69,200/-. It is submitted that the appellants have used components of only of the value of approximately Rs. 8 lakhs. It was further submitted that the appellants had merely assembled the scanners out of components, imported by them alongwith some Indian components. It is submitted that, therefore, it cannot be said that any manufacturing activity has taken place. In these words of the tribunal "the only manufacture that could have taken place, therefore, would be assembly of components into the finished machines." It is submitted that the "M/s. Nicolian Brothers would not have been granted a licence if they had not misrepresented to the licensing authority that they would be using indigenous components of the value of Rs. 2,32,69,200/-. It is submitted that as there was a misrepresentation the appellants were not entitled to the benefits of this exemption notification.

11. It is not disputed that what was imported were components, as set out in the bill of entry. It could not be disputed that what was ultimately exported were ultrasound scanners. As set out above, even according to CEGAT, there has been assembly of various components into the finished machines. In the case of Narne Tulaman Manufacturers Pvt. Ltd., Hyderabad v. Collector of Central Excise,

Hyderabad, it has been held that even though a party may manufacture only one part of the machine and import or get manufactured the other parts, then fit and assemble the parts into a complete machine, the process would amount to manufacture. Similarly, in the case of B. P. L. India Ltd. v. Commissioner of Central Excise, Cochin, it has been held that assembly of imported kits amounts to manufacturing. Further, in the case of Empire Industries Ltd. v. Union of India, it has been held as follow:-

"... Whatever may be the operation, it is the effect of the operation on the commodity that is material for the purpose of determining whether the operation constitutes such a process which will be part of 'manufacture'. Any process or processes creating something else having a distinctive name, character and use would be manufacture."

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12. Thus, it is clear that ultrasound scanners have been manufactured. The further submission is that manufacture in the ordinary sense is not enough but that there must be "substantial manufacture". It is submitted that the term "substantial manufacture" necessarily implies that not only the final product but a substantial amount of its components must also be manufactured by the party. We are unable to read any such requirement into the words "substantial manufacture". The words "substantial manufacture" appear to indicate that there need not necessarily be manufacture, but that any activity, including activities like assembling, which result in a new product, which is commercially a different product from what is imported, would be sufficient. The words "substantial manufacturing" do not indicate in any manner that a substantial amount of the components must also be manufactured. If that were required the policy would have said so. Of course, as set out in the case of M/s. Rattan Exports Ltd. Delhi v. Collector of Customs, Calcutta, JT 1987 (3) 271 mere fixing of a part or two on a fully assembled product would not be considered to be manufacture. But that is not the case here. Therefore, the finding that manufacturing activity had not been undertaken cannot be sustained.

13. As regards the contention that the appellants were not entitled to the benefit of the exemption notification as they had misrepresented to the licensing authority, it was fairly admitted that there was no requirement, for issuance of a licence, that an applicant set out the quantity or value of the indigenous components which would be used in the manufacture. Undoubtedly, while applying for a licence, the appellants set out the components they would use and their value. However, the value was only an estimate. It is not the respondents' case that the components were not used. The only case is that the value which had been indicated in the application was very large whereas what was actually spent was a paltry amount. To be noted that the licensing Authority having taken no steps to cancel the licence. The licensing authority have not claimed that there was any misrepresentation. Once an advance licence was issued and not questioned by the licensing authority, the customs authorities cannot refuse exemption on an allegation that there was misrepresentation. If there was any misrepresentation, it was for the licensing authority to take steps in that behalf.

14. We are, therefore, unable to uphold the impugned order or the order of the collector. Accordingly, the same are set aside. The show cause notice shall stand dismissed.

15. The civil appeals are, accordingly, allowed. There shall be no order as to costs.