

Customs, Excise and Gold Tribunal - Delhi

Plasma Spray Coats (P) Ltd. vs Collector Of Customs on 11 November, 1997

Equivalent citations: 1998 (99) ELT 110 Tri Del

ORDER G.R. Sharma, Member (T)

1. In the impugned order, the Collector (Appeals) had held that the benefit of concessional rate of duty cannot be extended to power supply units which have been imported independently and that in the circumstances, he found no reason to interfere with the order of the Assistant Collector.

2. The facts of the case are that the appellants imported Plasma Deposition System and presented a Bill of Entry dated 5-12-1989 at Madras. The appellants claimed the benefit under Serial No. 76 of Notification No. 77/89- Cus. The appellants submitted that the power supply units were short shipped by the foreign suppliers and that they have now supplied this power supply unit without payment of duty and, therefore, requested that they may be given the benefit as it was a part of the Plasma Deposition System. The Assistant Collector held against them on the ground that as per Note 2(a) of Section XVI power supply unit is to be assessed separately as it was not imported alongwith the main equipment and, therefore, was not eligible for the benefit of Notification No. 77/89-Cus. Against this order, the appellants had filed an appeal before the Collector (Appeals). The Collector (Appeals) held that the shortage was detected after clearance of the goods. He found from the Bill of Entry produced in respect of main equipment, the examination report says that the three packages were examined and it's Plasma Deposition System consisting of Spray Gun, Spray Control Unit, Power Feed Unit and others, were found in order. He observed that the power feed unit and others had been cleared and that whatever has now been imported is power supply unit and this will have to be assessed on merits. The Collector (Appeals) held that the benefit of Notification No. 77/89-Cus, cannot be extended to the import of power supply unit and, therefore, decided the issue against the appellants.

3. Shri J.S. Agarwal, learned Advocate appearing for the appellants, submits that the appellants came to know about the short supply of the power supply unit after clearance of the goods. He submits that they immediately took up the matter with the foreign suppliers who supplied the short shipped goods without charging anything. The ld. Counsel submits that it is evident from the contract for supply, the packing list and the invoices that power supply unit was not supplied alongwith original Plasma Deposition System. He submits that Plasma Deposition System shows that the power supply unit is an integral unit for the system as is evident from the technical literature of the manufacturer. He submits that from the correspondence exchanged and the material brought on record clearly shows that the power supply unit was not supplied by the foreign supplier while supplying the goods. He refers to the Bill of Entry and submits that the weight of the power supply unit was 900 kgs whereas the weight of the other items was only 300 kgs. The ld. Counsel submits that it was the mistake on the part of the foreign suppliers who made it good by supplying the power supply unit without any cost. He submits that since the power supply unit is an integral part of the Plasma Deposition System and was not supplied with the original equipment, therefore, power supply unit merited benefit of exemption of duty under Notification No. 77/89-Cus. He, therefore, prays that the appeal may be allowed.

4. Shri A.K. Agarwal, the Id. SDR appearing for the respondent Collector submits that before clearance the three packages were examined and the examination report of the Examining Appraiser clearly brings out that he had examined the three packages consisting of Spray Gun, Spray Control Unit and Power Feed Unit and others. He submits that the power feed unit will include power supply unit also. Since the goods were examined before clearance and at the time of clearance of the goods no objection was raised by the appellants, therefore, their subsequent action is of no avail. The Id. SDR reiterates the findings of the lower authorities and prays that the appeal may be rejected.

5. Heard the submissions of both sides. We note that the issue before us is whether the goods described as power supply unit was supplied with the main equipment for Plasma Deposition System. For deciding this issue, we have got examination report before clearance of the goods and the evidence adduced by the appellants. We note that the goods were examined and found in order. At the time of clearance, the appellants did not raise any objection as to the shortage of the power supply unit. Their subsequent correspondence and arguments are of no avail in view of the fact that the examination report speaks of power feed unit and others. If the contention of the appellants that the weight of power supply unit was 900 kgs and the other unit was only 300 kgs then this fact should have been clearly brought out at the time of clearance of the goods and they should have brought it to the notice of the Examining Authority. In this view of the matter, the point of short supply is not proved by the appellants. In so far as assessment of the power supply unit imported separately is concerned, we note that the power supply unit is a specific item and can be imported as such. It was not specifically designed even if it is used as equipment for supply of power to the Plasma Deposition System, it will not merit classification as part of Plasma Deposition System if it is imported separately.

6. In this view of the matter, we do not see any reason to interfere with the impugned order. In the result/the impugned order is upheld and the appeal is rejected.