

Customs, Excise and Gold Tribunal - Delhi

Bush India Ltd. vs Collector Of Customs on 10 December, 1997

Equivalent citations: 1998 (100) ELT 462 Tri Del

ORDER Lajja Ram, Member (T)

1. These are three appeals filed by (1) M/s. Bush India Ltd. (2) Relectronics Pvt. Ltd. (3) Cauvery Electronics Pvt. Ltd. being aggrieved with three separate orders-in-original passed by the Collector of Customs, Bangalore. The matter in all these three appeals relates to the eligibility of the goods imported to the benefit of Notification No. 188/87-Cus., dated 29-4-1987 (as amended). As common issue for our consideration is involved in all these three appeals, they are being disposed of by this common order.

2. When the matter was called no one appeared for the appellants. The notice for today's hearing has been issued to all the three appellants. In the interest of justice the matter was adjourned for today. Copy of the note-sheet so order out dated 5-9-1997 was sent to the appellants. As the matter is old in which the goods had been imported in the year 1988, we are proceeding to deal with the matters on merit after hearing Shri A.K. Agarwal, SDR.

3. The appellants had imported electronic components and had declared the goods in question as resistor - variable (potentio meters). It had been claimed that the goods were eligible for the benefit of concessional rate of customs duty as available to the resistors (other than heating resistors) and potentio meters against Sr. No. 1 of the Table under Notification No. 188/87-Cus. The Adjudicating Authority had held that the goods in question were compact tuning unit with mounted Printed Circuit Board variable resistor and brand switches and were not eligible to the benefit of said notification which was available only to the resistor and potentio meters and not to the compact tuning unit in which the potentio meter was only one of the many components.

4. We find that in the bill of entries the goods had been described as part No. E/1309 (B-100K)-Resistor - variable (potentio meters). The goods were assessed on the basis of the description as given by the importers. It was subsequently found that the benefit of Notification No. 188/87-Cus. had been allowed of on the basis of the incorrect description and that the goods were not mere potentio meters but were compact tuning unit with mounted printed circuit board variable resistor with brand switches. We find that the appellants had admitted that the item imported had got a mounted Printed Circuit Board along with the brand switches. They have, however, argued that even when the item imported had got a mounted PCB along with the brand switches, it does not mean that it would cease to be a potentio meters. Under Notification No. 188/87-Cus. Sr. No. 1 of the Table annexed to the said notification resistor (other than heating resistors) and potentio meters were eligible for the concessional rate of customs duty. The exemption is only to the resistor and potentio meters. In the electronic industries the potentio meters had a definite understanding. Of course there are different types of potentio meters. But the tuning unit is as such is different from the potentio meters which only form one of the component of the tuning unit.

5. The exemption notification had to be construed strictly and when in the exemption notification No. 188/87-Cus. the resistor and potentio meters were included for the purposes of the benefit of

concessional rate of customs duty, the benefit was only available to the resistors and potentiometers if imported as such and not to any unit in which the resistors and potentiometers might have been used.

6. The appellants had contended that the term potentiometer had not been defined in the Customs Tariff. We find that as per technical literature produced in the appeal from M/s. Relectronics Pvt. Ltd. they are a well recognised raw material and component in the electronics industry. We also find from the McGraw Hill Encyclopaedia of Science and Technology (Page 708-710) that the potentiometer (variable resistors) is a variable resistance device with three terminals used in electric circuits. It is used to adjust and control the electric potential (voltage) applied to some device or part of a circuit. It could be a linear or non-linear. The appellants have referred to the description in the import policy where potentiometer with PCB mounting had been covered for the purposes of import under OGL. We consider that when the entry had been amended to cover potentiometers with PCB mounting it was not to be said that they were covered by the earlier description of potentiometers and rheostats of device. As in the exemption notification the description used was simply resistors and potentiometers we consider that benefit of exemption Notification No. 188/87-Cus. was not available to the goods imported.

7. The Id. Collector of Customs, Bangalore had dealt with the matter in detail and had discussed the various contentions raised by the appellants. He had also referred to the product description and technical literature and had come to a decision that the goods imported were not mere potentiometers and that the importers had wilfully omitted to give full description of the goods and had misled the Department by simply describing the goods as potentiometers just to avail the benefit of notification which was not available for the goods under consideration.

8. A reference had been made in the show cause notice and in the adjudication order to the clarification given by the Department of Electronics. The appellants have pleaded that this clarification was not made available to them. We find that the adjudicating authority had discussed the matter in detail and had come to his decision on merits and that the clarification from the Department of Electronics had been mentioned just to confirm his view. We do not consider that in the facts and circumstances of the case non-supply of the clarification had in any manner adversely affected the interest of the appellants.

9. Taking all the relevant facts and considerations into account we do not find any material to interfere with the view taken by the Adjudicating Authority in all the three cases. We also consider that the amount of penalty imposed in all these three cases was reasonable and do not call for any interference.

10. In view of the above discussion we do not find any merit in these three appeals. All the three appeals are rejected. Ordered accordingly.