

Customs, Excise and Gold Tribunal - Tamil Nadu

Titanium Tantalum Products vs Collector Of Customs on 11 December, 1992

Equivalent citations: 1993 ECR 410 Tri Chennai, 1993 (65) ELT 412 Tri Chennai

ORDER

1. This appeal is directed against the order of the Additional Collector of Customs, Madras, dated nil of June, 1991 levying a fine of Rs. 25,000/- in lieu of confiscation of tantalum sheets imported by the appellant valued at Rs. 1,27,073/-. Proceedings were instituted against the appellant on a charge that the goods viz. tantalum sheets which were imported by the appellant in February '91 were without a valid licence resulting in the impugned order.

2. Shri Krishnan, the learned Counsel for the appellant submitted that the appellant is the actual user of the goods in question in regard to manufacture of Jacketted reboiler. The fact that the appellant is the actual user of the goods imported in question does not admit of any controversy. Even the licensing authority viz JCCI&E who issued an abeyance order dated 14-12-1990 which was followed by a show cause notice seeking to debar the appellant from importing the goods on the ground that the appellant was not the actual user of the goods in question withdrew the abeyance order by communication dated 22-4-1991. The appellant entered into a contract with the supplier of the goods on 10-9-1990 and made application for irrevocable letter of Credit with the Bankers on 5-10-1990. Unfortunately consequent on the correspondence between the Reserve Bank of India and the appellant's Bankers, the Letter of Credit (LC) could only be opened on 8-1-1991 and in the meanwhile by Public Notice dated 6-11-1990 the goods in question were taken out from the list of OGL from Appendix 6 to 3A requiring licence for the import of the same. The learned Counsel therefore submitted that the breach if any is only technical in nature and the learned adjudicating authority has not levied any penalty on the appellant and therefore contended that in any event the penalty of Rs. 25,000/- in the above circumstances is very high.

3. Heard Shri R. Subramanian, the learned D.R.

4. I have considered the submissions made before me. The indisputable fact remains that the goods in question which were permissible for import under OGL were taken out from the OGL List - Appendix 6 and brought to Appendix 3A requiring import licence for import of the same by Public Notice dated 6-11-1990. The appellant could only open the LC on 8-1-1991 and the goods arrived in February '91 and therefore in the above circumstances the goods could not be imported under OGL since the appellant was not armed with a licence for taking clearance of the goods notwithstanding the change in the policy. Therefore, in the above circumstances I am inclined to hold that the import of the goods was not covered by and valid licence and therefore, in this view of the matter, I uphold the finding of the adjudicating authority in regard to confiscability of the goods under the Act. However, taking into consideration the fact that the appellant is the actual user of the goods and was actuated by the bona fides and had placed the order with the supplier on 10-9-1990 and had made application for opening irrevocable letter of Credit as early as 5-10-1990, I am inclined to think that a lenient view is called for and in this view of the matter, I reduce the fine to Rs. 15,000/- (Rupees Fifteen thousand). Except for the above modification, the appeal is otherwise dismissed.