

Customs, Excise and Gold Tribunal - Delhi

Vishal Electronics Pvt. Ltd. vs Collector Of Customs on 24 May, 1996

Equivalent citations: 1998 (102) ELT 188 Tri Del

ORDER U.L. Bhat, J. (President)

1. Appellant imported five consignments of components and sub-assemblies of C.C.T.-video Camera, one consignment under R.E.P. Licence and the other consignments under OGL. The first four consignments were packed in three cases. The fifth consignment was packed in a separate case. Examination showed that three cases contained electronic sub-assemblies and the fourth case contained plastic bodies of video camera and that all the imported goods, when put together formed complete sets of video cameras, Model JVC GX N. 5.E, in CKD condition. Import of video cameras was restricted as per Entry 122 of Appendix 2 Part B of 1985-88 Import Policy and required a specific licence which the appellant did not possess. Invoice value was also found to be low. Show cause notice was issued in regard to the unauthorised import and misdeclaration of value. It was contended that appellant was a small scale manufacturer of video cameras and actual user of the imported goods, that the import was not of video cameras in SKD condition attracting Entry 122 of Appendix 2 Part B but of components and sub-assemblies governed by other entries and the import of first consignment was supported by REP licence and import of goods in the other four consignments was under OGL and the invoice value was the correct value. The Deputy Collector of Customs overruled their contentions and held that the import was of complete sets of video cameras in SKD condition which required specific licence and the appellant did not produce any such valid licence for the complete sets. He also loaded the value. Accordingly confiscation was ordered, fixing redemption fine of rupees two lakhs and levying duty on the basis of the loaded value. This order has been confirmed by the Collector (Appeals). Hence this appeal.

2. The following are the particulars of Bills of Entry and the entitlement for import as claimed by the appellant:-

1.	Bill of Entry 2673/65 -	25 pieces of Modules for Vidicon Tubes and 25 pieces of cables	Against two REP licences issued against Export Product Group A.35 of Appendix 17 of the Policy, valid for import of items in Appendix 3 at Serial No. (d) in column occurring against Export Product Group A.35 of Appendix 17
2.	B.E. 2673/137 -	25 pieces of Cathode Ray Tube and 25 pieces of Deflection Yoke	Under OGL Against Serial No. 565 (1) of Part I List 8 of Appendix 6 as components in appellant's capacity as actual user (industrial)
3.	B.E. 2673/138 -	25 pieces of Vidicon Tube and 25 pieces of Deflection Coil.	Under OGL against Serial No. 1 of Appendix 6 of the Policy as actual users (Industrial)
4.	B.E. 2673/139 -	25 pieces of lenses	Ditto
5.	B.E. 2673/140 -	25 pieces of plastic body.	Under OGL against Serial No.

516 of Part I of List 8 of
Appendix 6 read with Serial No.
1 of Appendix 6 as actual users
(industrial).

3. It is accepted by the appellant that goods imported under the five consignments, were complete sub-assemblies and plastic bodies of video cameras. The lower authorities have held the import to be of video cameras in CKD condition attracting Entry 122 of Appendix 2, Part B of 1985-88 Import Policy requiring specific licence. Admittedly the appellant did not possess a valid licence for import of goods falling under Entry 122 of Appendix 2, Part B of the relevant Policy. The contention of the appellant is that Modules for Vidicon Tubes and cables can be imported against the two REPs produced as per item in Appendix at Serial Number (d) against Column 4 occurring against Export Product Group A.35 of Appendix 17. It is further contended that the goods in other four consignments fall under various entries in several Appendices referred to above which can be validly imported under OGL subject to actual user (Industrial) conditions. The factual basis of the contentions are not controverted in the order of the lower authorities. The Departmental Representative also did not controvert the factual basis of the above contentions of the appellant; according to him, these contentions have no relevance since all the goods imported, if put together, constitute complete sets of video cameras in CKD condition and the same cannot be imported without specific licence in the guise of separately importing components and sub-assemblies of video cameras. We will advert to the decisions relied on by the appellant and the Department.

4. The earliest decision is that of the Supreme Court in, *Girdharilal Bansidhar v. Union of India and Ors.* AIR 1964 SC 1519, a case under the Sea Customs Act. The appellant had a licence for import of iron and steel bolts, nuts, screws, studs excluding those adapted for use on cycles. He imported certain goods described as "stove bolts and nuts" on the strength of the licence. The goods were found to be "parts of nuts and bolts of Jackson Type single bolt oval plate belt fasteners" whose import had been totally prohibited by a notification in force at the time of import. The licence made it clear that it was subject to any other prohibition or notification regulating the import of goods which may be in force at the time of import. The Collector held that the import was an attempt to evade the prohibition. The court upheld the order of the Collector, observing :-

"...We cannot accede to the position that it is the intention of the Rule that importers are permitted to do indirectly what they are forbidden to do directly, and that it permits the importation separately of components which have no use other than as components of an article whose importation is prohibited, . and that an importer is thereby enabled to assemble them here as a complete article though if they were assembled beyond the Customs Frontiers the importation of the assembled article into India is prohibited."

5. The next decision is that of the Supreme Court in *Union of India v. Tarn Chand Gupta and Brothers*, 1983 (13) E.L.T. 1456. The respondent had an import licence for import of parts and accessories of motor cycles and accessories and imported two consignments of goods which arrived in two different ships. The goods were declared to be parts of motor cycles. Custom House found

that the goods constituted 51 sets of Rixe mopeds CKD condition the import of which was prohibited under remark II against Entry 294. Entry 294 relates to motor cycles and scooters. The remark II stated that licences granted under Item 294 will not be valid for the import of motor cycles or scooters in CKD condition. Remark in stated that applications from approved manufacturers for import of motor cycles, scooters in CKD condition will be considered ad hoc by Chief Controller, Imports. Entry 294 related to articles, other than rubber tyres and tubes, adapted for use as parts and accessories of motor cycles and scooters, except such articles as are adapted for use as parts and accessories of motor cars. Section 167(8) of the Sea Customs Act provided that goods shall be liable to confiscation if the goods, the importation of which is for the time being prohibited or restricted by or under Chapter IV, are imported contrary to such prohibition or restriction and the court noticed that entry 294 was complete in itself and dealt with motor cycles and scooters complete and assembled and also in CKD condition while Entry 295, related to parts and accessories of motor cycles and scooters, except for rubber tyres and tubes, for whose import a separate licence could be obtained under Entry 41 of Part V, and there were no limitations as to the number or kind of parts or accessories which could be imported under a licence and an importer could import all the parts and accessories of motor cycles and scooters and it would not be a ground to say that he has committed breach of Entry 295 or the licence or, that the parts and accessories imported, if assembled, would make motor cycles and scooters in CKD condition. There were no remarks against Entry 295 as there were against Entry 294, that a licence in respect of goods covered by Entry 295 would not be valid for import of spares and accessories which, if assembled, would make motor cycles and scooters in CKD condition. The court held :-

"But the question is what have the respondents done indirectly what they could not have done directly. In the absence of any restriction in Entry 295, namely, that a licence in respect of goods covered by Entry 295 would not be valid for import of parts and accessories which, when taken together, would make them motor cycles and scooters in CKD condition, the respondents could import under their licence all kinds and types of parts and accessories. Therefore, the mere fact, that the goods imported by them were so complete that when put together would make them motor cycles and scooters in CKD condition, would not amount to a breach of the licence or of Entry 295...Such a condition was advisedly not placed in Entry 295 but was put in Entry 294 only. The reason was that import of both motor cycles and scooters as also parts and accessories thereof was permitted, of the first under Entry 294 and of the other under Entry 295. A trader having a licence in respect of goods covered by Entry 294 could import assembled motor cycles and scooters, but not those vehicles in CKD condition, unless he was a manufacturer and had obtained a separate licence therefor from the Controller of Imports...Thus the restriction not to import motor cycles and scooters in CKD condition was against an importer holding a licence in respect of goods covered by Entry 294 under which he could import complete motor cycles and scooters and not against an importer who had a licence to import parts and accessories under Entry 295.

...There is, therefore, no question of a licensee under Entry 295 doing indirectly what he was not allowed to do directly....

The result is that when the Collector examines goods imported under a licence in respect of goods covered by Entry 295 what he has to ascertain is whether the goods are parts and accessories, and

not whether the goods, though parts and accessories, are so comprehensive that if put together would constitute motor cycles and scooters in CKD condition."

6. The Supreme Court in Tara Chand Gupta's case 1983 (13) E.L.T. 1456 considered the entire decision in Girdharilal Bansidhar, 1984 ECR 491 and observed :-

"What needs to be observed in that decision is that the Collector's decision was, under which of the two competing entries the imported items fell, that is, whether the goods were bolts and nuts or were components of the prohibited article. And the Court under Article 226, could not interfere with the decision of the authority upon whom jurisdiction to decide the question, whether the goods fell under one or the other entry, was conferred on the ground that it was erroneous. Further, the nuts and bolts imported by the appellant could only be used as components of the prohibited article. In other words, the import was of parts of the prohibited article and, therefore, of the prohibited article. It was, therefore, that the Court held (1) that the Customs' decision was not incorrect, and (2) that the importer could not be allowed to do indirectly what he could not directly.

...Girdharilal's case is clearly distinguishable because it is not as if motor cycles and scooters are prohibited articles as was the case there. The restriction is not against licensees importing motor cycles and scooters in CKD condition. The question in the instant case was not under which of the two Entries 294 or 295, the goods fell, but whether the goods were parts and accessories covered by Entry 295."

(Emphasis supplied)

7. Sharp Business Machines Pvt. Ltd. v. Collector of Customs, 1990 (49) E.L.T. 640 is another decision of the Supreme Court. Appellant started a phased manufacture of plain paper copiers and imported components and consumables in SKD/CKD condition for plain paper copiers. Three consignments were imported from Hong Kong at Bangalore and three consignments were imported from Singapore. The Collector held that the imported goods were fully finished copiers in SKD/CKD form and the declaration that the goods were only parts was a misdeclaration and the import was not permissible. It was also held that even if all the parts were viewed individually, none of the items tally with the licence. Value was held to be misdeclared and the correct value was in excess of the licence value. The Tribunal had held that one has to look into the respective licence and not to the fact that if all the consignments covered by all the Bills of Entry are assembled together, there will be complete machines. The Court noticed that according to the import policy new small scale entrepreneurs were allowed by the policy to import only 62% of the components and balance 38% was to be manufactured by them locally and the percentage of 62% was to be reduced in the subsequent years. The policy, it was held, was not meant for entrepreneurs who, instead of importing 62% of the components, imported 100% of the components of a fully finished and complete goods manufactured by a foreign country. Admittedly, fully finished plain paper copiers were a prohibited item for import and thus the device adopted by the company was a fraud on the import policy itself. The court set aside the finding of the Tribunal in this regard. Referring to Tara Chand Gupta's case, 1983 (13) E.L.T. 1456 (SC), the Court held that the Tribunal was not correct in placing reliance on the decision since the Tribunal was dealing with a case of import of prohibited

item in fraud of the policy. The court indicated that fact situation was more akin to that in Girdhari Lal's case, 1984 ECR 491.

8. The appellant has placed reliance on a decision of the High Court of Calcutta in Collector of Customs, Calcutta v. Mitsunry Electronic Works, 1987 (30) E.L.T. 345. The order was passed by a Division Bench on the miscellaneous appeals filed against interim order passed by a learned single Judge. By the same order, the writ petition filed by the importer at the pre-clearance stage was also disposed. Three export houses submitted thirteen Bills of Entries on the basis that the imports were covered by Additional Licences and partly by REP licences. The goods were parts and components of TV sets. According to the Customs, the goods, if put together, constituted complete TV sets and the licence holders were not the real importers and the real importer was another person. The High Court observed :

"The first contention... is that if all the consignments covered by all the bills of entry in the case of three export houses are assembled together, there will be complete TV sets and as such their import is prohibited. Such a course, however, cannot be adopted to find out whether individual licence covers the goods imported. It is a sheer coincidence that all the consignments have arrived at a time. One has to look into the respective licence. The writ petitioner may have purchased all the articles covered by all the licences but that cannot be a ground for withholding the goods alleging that complete TV sets have been imported. We are, therefore, unable to accept this contention...."

The Court found that goods covered by each consignment were covered by the relevant licences produced and, therefore, directed the Customs to complete the assessments and to release the goods forthwith upon payment of duty. It was further directed that the release of the goods will not prevent the authorities, if otherwise entitled to, to investigate and proceed against the writ petitioner and Export Houses according to law. It is necessary to notice that the court did not refer to any of the decisions of the Supreme Court adverted to by us.

9. Reliance is placed on the decision of the Tribunal in Susha Electronics Industries v. Collector of Customs and Central Excise, 1989 (39) E.L.T. 585. The appellant therein, manufacturer of colour TV sets, imported 90 pieces of colour picture tubes and 90 sets of plastic moulded components and sought clearance under OGL under Appendix 6 of 1985-88 Policy. The colour picture tubes had showed mark of Sony made in Japan. The outer boxes also contained similar marks. The plastic moulded cabinets also had similar marks. The appellant had also imported 90 sets each of sub-assembly, speaker, twiter set, antenna and remote control. The Custom House took the view that the goods imported were colour TV sets in SKD condition which were restricted items importable only under a specific licence and not under OGL. A part of the goods were imported at Ahmedabad and rest at Kandla Port. It was pointed out that two consignments imported at Ahmedabad were against specific licences. The Tribunal took the view that the goods imported at Kandla Port by themselves would not constitute colour TV sets and, therefore, clearance could not be withheld. There was no finding that the components sought to be cleared at Kandla Port would not be required for the manufacturing activities of the appellant and that the appellant had violated any of the conditions of Appendix 6 or condition No. 22. The Tribunal relied on the decision of the Supreme Court in Union of India v. Tara Chand Gupta and Brothers, 1983 (13) E.L.T. 1456. The

imports at Kandla Port were OGL items. The Policy did not place any restriction regarding import of OGL items under OGL and restricted items against licences even if both sets of items put together would make complete TV sets. The Tribunal took the view that when the appellant imported permitted items of all components of TV sets, some against licences and some under OGL, the Collector was not justified in objecting to the clearance of the OGL items on the ground that those items if clubbed with other items imported against licences would constitute complete TV sets in SKD condition.

10. In *Photo Copy Centre v. Collector of Customs*, 1991 (56) E.L.T. 801, the appellant imported 7 pieces of complete photo copiers in SKD condition under two Bills of Entry. One Bill of Entry declared the goods as spares of printing machines and the other Bill of Entry filed not by the appellant but by another person, declared the goods as spares of photo copier. The goods were supplied by the same supplier and came by the same vessel. The goods under one Bill of Entry were sought to be cleared by the appellant under OGL and the other Bill of Entry under an additional licence of the other person. On examination, the goods were found to be parts of photo copier which make complete photo copying machine in SKD condition and not spare parts of the printing machine or photo copier. The goods were found to be old and used. Importer had no valid licence covering such old and used goods. The appellant's claim that they purchased the goods in the other Bill of Entry on High Sea Sale basis as permitted under ITC Policy was not accepted by the Department. Thus it was seen that the two consignments were imported in the names of two different parties. The appellant relied on the decision of the Calcutta High Court in *Collector of Customs v. Mitsunry Electronic Works*, Calcutta, 1987 (30) E.L.T. 345 and certain decisions of the Tribunal. The Department relied on the decision of the Supreme Court in *Sharp Business Machines Pvt. Ltd. v. Collector of Customs*, 1990 (49) E.L.T. 640. The Tribunal held that the decisions relied on by the appellant were not applicable, that the view of the Tribunal was no longer a good law in view of the decision of the Supreme Court in *Sharp Business Machines Pvt. Ltd. case*, 1990 (49) E.L.T. 640. The Tribunal also relied on the decision of the Supreme Court in *Girdharilal Bansidhar v. Union of India and Ors.*, 1984 ECR 491. The Tribunal indicated that there was clear misdeclaration of the misdescription of the goods in the Bill of Entry and no valid licence was produced for old and used photo copier machines and the provisions of the Import and Export (Control) Order and the Customs Act, 1962 were violated.

11. Certain facets emerged from a close study of the decisions. *Girdharilal Bansidhar's case*, AIR 1964 SC 1519 is inapplicable to the facts of the present case, as it dealt with a case of import in CKD condition of goods, the import of which was totally prohibited. In *Tara Chand Gupta's case*, 1983 (13) E.L.T. 1456 the import was of parts and components on the basis of a licence issued under an entry which did not contain any restriction to the effect that licence for the import of parts thereunder would not be valid for import of parts which, if assembled, would make motor cycles and mopeds in CKD condition and the Supreme Court held that in the absence of such specific restriction, all kinds of parts and accessories could be imported under a licence. The court also distinguished the earlier case on the ground that that case dealt with a case involving prohibited articles. In *Sharp Business Machines' case*, 1990 (49) E.L.T. 640 also the Supreme Court dealt with a case of import in CKD condition of prohibited goods which was a fraud on the Import Policy. The decision of the Tribunal in *Susha Electronics Industries case*, 1989 (39) E.L.T. 585 followed the

decision in Tara Chand Gupta's case. In Photo Copy Centre case, 1991 (56) E.L.T. 801 the Tribunal found the facts to be akin to those in Sharp Business Machines case which, we have indicated, related to import in CKD condition of prohibited goods.

12. We will now examine the facts of the present case. The first Bill of Entry related to 25 pieces of Modules and cables against two REP licences issued against Export Product Group A.35 of Appendix 17 of the Policy, valid for import of items in Appendix 3 at Serial No. (d) in column occurring at para A.35 of Appendix 17. The permitted goods are :

"Any other items of electronic components and raw material, appearing in the Appendices 3 and 5 in the Import Export Policy used in the manufacture of electronic items (20%)."

The Department has no case that the goods sought to be imported against two REP licences do not fall under the above category. 25 pieces of Cathode Ray Tube and 25 pieces of Deflection Yoke were sought to be imported against second Bill of Entry under OGL against Serial No. 565 (1) of Part I List 8 of Appendix 6, namely, "Electronics items (other than those in Appendix 3 Part A) :-

Cathode Ray tubes."

The categories of eligible importers are actual users industrial. 25 pieces of Vidicon Tubes and 25 pieces of Deflection Coil were sought to be imported under the third Bill of Entry under OGL against Serial No. 1 of Appendix 6, namely, "Raw materials, components and consumables (non-iron and steel items) other than those included in Appendices 2 and 3 Part A, 5 and 8."

Categories of eligible importers are actual users industrial. 25 pieces of lenses were sought to be imported under the fourth Bill of Entry against the same item. 25 pieces of plastic body were sought to be imported under the fifth Bill of Entry under OGL against Serial No. 516 of Part I of List 8 of Appendix 6 read with Serial No. 6 of Appendix 6. We have already adverted to Serial No. 516 of Part I of List 8 of Appendix 6 which reads thus :

"Plastic extruded/moulded/fabricated components or products."

13. There is no dispute that the appellants are actual users industrial. There is no dispute that the goods under the first Bill of Entry are covered by the two REP licences possessed by the appellant and the goods under other Bills of Entry are covered by the respective items against OGL. There is no restriction in any of the items against import of sub-assemblies or assemblies in CKD condition as it existed in the Policy considered in Girdharilal Bansidhar case and Sharp Business Machines case. Our attention has not been invited to any of the provisions relating to OGL stipulating any general restriction. In the circumstances, we are of opinion that each Bill of Entry must be considered with reference to either the licence in case where specific licence is necessary and in other cases the particular tariff item relating to goods which could be imported and the provisions relating to OGL. Department has no case that video cameras are prohibited items. In the absence of prohibition or any specific restriction of the nature referred to above, it is not open to the Department to contend that the goods imported under all the Bills of Entry, if put together, would

constitute video cameras in CKD condition and the same cannot be imported without specific licence.

14. For the reasons indicated above, we set aside the impugned orders and allow the appeal.