

Customs, Excise and Gold Tribunal - Mumbai

Sona Exporters vs Collector Of Customs on 8 May, 1992

Equivalent citations: 1993 (48) ECR 159 Tri Mumbai

Bench: P Desai

ORDER P.K. Desai, Member (J)

1. This appeal is directed against the Order-in-Appeal No. 1638/87BCH dated 1.4.1987 of the Collector (Appeals) confirming the Order-in-Original, No. 1344/85 dated 12.9.1985 of the Assistant Collector, confiscating the consignment alleged to be of super precision EP 7 Ball Bearings, having CIF value of Rs. 34,110/- and sought to be cleared under the Additional Licence dated 11.4.1984 issued during the Policy Period AM 1983-84, but granting option to pay fine of Rs. 34,000/- in lieu of confiscation.

2. The appellants imported the said consignment and sought clearance against the additional licence which permitted import of items in Appx. 5 and 7 excluding those appearing in Appendix 26, pleading the consigned goods to be falling within Appx. 4 in view of letter from DGTD dated 14.8.1985. L/C for the said consignment was opened on 12.4.1985, and the Airway Bill was dated 29.5.1985. The clearance was however, objected to on the ground that as per the Policy AM 1984-85, para 257 providing for transitional arrangements, the import of items appearing in Appx. 4 of 1984-85 policy could be made under the said licence, even though such items did not appear in Appx. 5 and 7 of AM 1983-84 but the facility was not available for import of items appearing in Appx. 13 of AM 1984-85, and as the item imported fell within Appx. 13, the licence was not available. A Show Cause Notice was therefore issued, in reply whereof, it was pleaded that the subject goods were covered by Sr. No. 395 of Appx. 4 Part A. The adjudicating authority however held the goods as hit by Appx. 13 Sr. No. 5 and ordered confiscation, holding the licence as not available. In the appeal, the appellate authority endorsed the view of the adjudicating authority and confirmed the order as indicated above.

3. Shri S.D. Nankani, the Ld. Advocate for the appellants, referred to Para 186 of the Policy Book AM 1983-84 and referred to sub para (4) and (9) thereof, pleading that the similar provisions existed in para 186 sub-para (4) and (8) and pleaded that by virtue of the said provision, special facilities were extended to Additional Licence Holders and further pleaded that by virtue of sub para (4), the Additional Licence Holders were empowered to import all the items figuring in Appx. 5 and 7, excluding those figuring in Appx. 26 of Policy AM 1983-84, which were in the nature of general rights, but over and above that vide Para (9), such Additional Licence Holders were made entitled to import spares of certain specified items. In his submission, there was no dispute over the point that the items imported were spares of the machinery figuring in sub para (9). In his submission, the transitional provisions incorporated in para 257 of AM 1984-85 Policy though governed the rights invested vide sub para 4 of para 186 of 1983-84 Policy, they did not affect the entitlement for import vide sub para (9) and that therefore, embargo of entry in Appx. 13 of the subsequent policy, as also the transitional provisions of Para 257, could not stand attracted. He also pleaded that subsequently also two other similar imports under the same licence had been allowed, and ITC Bonds executed had been cancelled.

4. Ms. Lipika Majumdar Roy Choudhury, the Ld SDR, has however, submitted that subsequent releases has no relevance to the point at issue here, as the detention there was in some other context. In her submission, vide policy provisions of AM 1984-85, the items imported was covered under Appx. 13, and as such not allowed for import under Additional Licence to the Export House, and that the only issue that required to be considered was whether para 186(9) of AM 1982-83 Policy Book could stand attracted, in a way as not hit by the provisions of para 257 of AM 1984-85 Policy. She initially pleaded that the documents nowhere indicated that the subject import was of spares for some specific machinery figuring in the said paragraph. In her submission, neither invoice, nor Airway Bill nor even the Bill of Entry indicated that the imported goods were imported as spares, and that even before the adjudicating authority, such a claim was not advanced, and as such, no claim to that effect could now be entertained. On merits she pleaded that by virtue of Para 257(2) of AM 1984-85 Policy, items figuring in Appx. 13 of that Policy Book, were made not importable by Export House and that the same did not stand as covering only the imports as allowable vide sub para (4) of Para 186 of AM 1983-84, but also covered provisions of sub para (9), and with a blanket restriction imposed, the import was clearly unauthorised.

5. Shri Nankani, the Ld. Advocate in reply, pleaded that the point as to the imported item being spares of machinery figuring in sub para (9) of para 186 was already raised and catalogue duty produced and that import as such was never made a point at issue by the authorities below.

6. Considering the submissions made, and perusing the records, the only issue to be considered here, is whether the item imported falls within the ambit of sub para (9) of para 186 of AM 1983-84 and whether by virtue of sub para (2) of para 257 of AM 1984-85, the same is not importable under the licence produced. There being no other point at issue both, in relation to the factual position or in relation to interpretation of other policy provision, it does not appear necessary to consider the same.

7. The appellants claim that the subject goods are imported as spares for the machinery specified in sub para (9) however, no clear data is available as to which is precisely the machinery of which they are the spares. According to the appellants the details in that regard were duly furnished before the Collector (Appeals). However, that is not the major issue for consideration here. The issue here is, whether the import made is as spares for those machines. From the invoice and other relevant documents made available, there is no indication of import of items as spares so as to fall within the ambit of sub para (9). However, from the averments made in the order in original, such a plea appears to have been raised. It therefore cannot be held that the plea to that effect has been advanced for the first time at the subsequent stage.

8. Reading sub para (2) of para 257 of the Policy Book, AM 1984-85, what it provides for is granting of Additional entitlement to import the items which figure in Appx. 4 of that Policy even if that did not figure in Appx. 5 and 7 of the earlier policy and then specifically mentions "This facility will not however be available for import of items appearing in Appx 13 of Import Export Policy 1984-85 except to the extent covered under sub para 203(5)". The words "this Policy" when read in conjunction with the benefit made available in the earlier part of the said paragraph, which relates only to the provisions contained in sub para (4) of Policy AM 1983-84, indicates that it has the

reference only to the import entitlement under the said paragraph. Sub para (9) however confers some rights over and above those available under sub para (4) as otherwise, specific induction thereof was unnecessary. When the special facility is sought to be extended under a specific provision, and the licence is issued in relation thereto, with no express provision made withdrawing the same, and making it subject to provision of Appx. 13, of AM 1984-85, there ought to be a specific provision made in that regard. Significantly sub para (8) of para 186 of Policy Book AM 1984-85 is the same as sub para (9) of para 186 of the earlier policy and as such, the holder of the Additional Licence issued during the Policy Period AM 1984-85, could also import the same.

10. When therefore no specific bar is provided for, the import covered under sub para (9) of Para 186 of AM 1983-84 Policy Book, under the valid additional licence issued to an Export House, cannot be considered as unauthorised.

11. The appeal, under the circumstances, is allowed, and order of the authorities below is set aside, with consequential relief.