

Supreme Court of India

Indian Telephone Industries ... vs Collector Of Customs, Madras on 12 March, 1997

Equivalent citations: 1997 (92) ELT 463 SC, (1997) 9 SCC 629

Bench: A Ahmadi, B J Reddy, S Kurdukar

ORDER

1. In this batch of appeals filed by the M/s. Indian Telephone Industries Ltd., a common question arises for consideration in the backdrop of the following facts.

2. The appellants are Public Sector Industrial Undertaking engaged in the manufacture and sale of tele-communication equipment. They have a department or a Unit known as the 'Research and Development Unit' in their Undertaking. This Unit undertakes research work. The appellants imported certain goods for the use of this Research Unit and claimed exemption under Notification No. 70/81-Customs, dated 26-3-1981. This notification issued under Section 25(1) of the Customs Act, 1962 superseded the earlier notification issued by the Government of India No. 211-Customs, dated August 2, 1976. It provides that the Central Government on being satisfied that it is necessary in the public interest so to do, exempts all scientific and technical instruments, apparatus, equipments including spare parts etc. imported by a Research Institution from the whole of the duty of customs leviable thereon and the whole of the additional duty leviable thereon under Section 3 of the Customs Tariff Act subject to three conditions, namely, (1) that the imported goods are such as are not manufactured in India; (2) that the import of the goods in respect of which exemption is claimed was essential for research and that they shall be used only for that purpose and (3) the said Institution is not engaged in any commercial activity.

3. The Tribunal, therefore, raised three questions for consideration namely; (1) whether Research and Development Unit of the appellants was a Research Institution; (2) whether the said Research and Development Unit was engaged in any commercial activity and (3) whether the articles in question were imported by the said Research and Development Unit. The Tribunal answered the first question in affirmative and the second question in the negative, i.e., both in favour of the appellants, but it answered the third question in the negative holding that the goods were not imported by the Research and Development Unit of the appellants. It is, therefore, necessary for us to consider if the tribunal was right in rejecting the claim for exemption solely on the basis of its finding on the third question.

4. The Tribunal discusses the third question in paragraphs 8 and 9 of the impugned judgment. It points out that in the Bills of Entry as well as in the Invoice, the name of Research and Development Unit as importer does not appear. On the contrary, these documents show the Indian Telephone Industries as the importers and there is no dispute before us that the said importers are engaged in commercial activity. The fact that the Unit is a part and parcel of the appellants cannot be disputed nor has it been disputed. It is merely a Unit within the establishment of the appellant and is funded by the appellant. We enquired of the learned counsel for the appellants if the said Unit has an independent existence and all that the learned counsel could point out was that the Research and Development unit had been included in the list of institutions approved for the grant of exemption from customs duty on import of scientific/technical equipment and apparatus. This inclusion by the

communication of November 29, 1966 cannot come to the rescue of the appellants because the import is not by the Research and Development Unit, but is by the Indian Telephone Industries, which is a commercial establishment. It is, therefore, difficult for us to say that the tribunal was in error in the view that it took.

5. We, therefore, do not see any merit in these appeals and dismiss them but make no order as to costs.