(2000) 08 MAD CK 0080

In the Madras High Court

Case No : R.C. No. 4 of 1995

Collector of Customs APPELLANT

Vs

Ganesh Raja Organisation RESPONDENT

Date of Decision : 03-08-2000

Acts Referred:

Citation : (2001) 74 ECC 71 : (2000) 122 ELT 19

Hon'ble Judges : R. Jayasimha Babu, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : V. Vaithiyalingam, CGSC, for the Appellant; S. Sampathkumar, for the Respondent

Judgement

R. Jayasimha Babu, J.—The question referred to us is, "Whether, in the facts and circumstances of the case and on the applicability of the ratio of the ruling of the Supreme court in the case of Sharp Business Machines Pvt. Ltd., Bangalore Vs. Collector of Customs, Bangalore, and also on the basis of the ruling of the Supreme Court in the case of Union of India (UOI) Vs. Tarachand Gupta and Bros, , whether the goods imported by the respondent would required a specific licence?".

2. The facts are not in dispute. The assessee had a R.E.P. licence under which, it was entitled to import parts. What was imported were plastic extruded ball-point pen barrels, which were imported on 22-11-1990, plastic/ extruded ball-point pen knobs and caps, which were imported on 01.11.1990 and ball-point pen refills, which were imported on 21.07.1990, all of them were cleared by the Customs and the duty, if any leviable on those parts under the relevant classification were levied.

3. Subsequently, proceedings were instituted by the Customs Department alleging that what had been imported constituted consumer goods in a knocked down condition and therefore, covered by S. No. 173 of Appendix-2. Part B of the Import Policy AM 1990-93, which requires a specific licence for import of

consumer goods in S.K.D. condition including sub-assemblies and assemblies. Though initial adjudication was in favour of the Revenue, on appeal to the Customs, Excise and Gold (Control) Appellate Tribunal, the Tribunal held that the facts of the case attracted the law that had been laid down by the Apex Court in the case of Union of India (UOI) Vs. Tarachand Gupta and Bros, and that the importation of parts of a ball-point pen in the manner done by the appellant therein could not be regarded as being violative of the import policy. The Tribunal, inter alia pointed out that in Appendix 3, Part A, Sl. No. 647 of the Import Policy permitted the importation of metal caps, clips and barrels for pens (including ball-point pen), pen nibs (for handwriting) and ball-point refills, while Sl. No. 665 permitted the importation of plastic extruded/moulded/fabricated components. The Tribunal considered the ratio of the two judgments of the Supreme Court that had been cited before it, which judgments are referred to in the question of law referred to this court, and held that the later decision of the Supreme Court in the case of Sharp Business Machines Pvt. Ltd., Bangalore Vs. Collector of Customs, Bangalore, did not apply to the facts of the case. We are in agreement with that view of the Tribunal after having heard the learned counsel and considered the effect of the two decisions of the Apex Court.

4. The Supreme Court, in the case of Union of India (UOI) Vs. Tarachand Gupta and Bros, , while dealing with the case of importation of parts of motor cycles and in the light of the relevant entries in the import policy, rejected the argument that the importer there had done something indirectly when the doing of the thing directly was prohibited by law. The importation of motor cycles in C.K.D. condition was not permissible even at that time. The court observed in that case after referring to the relevant entries, as follows :

"That being so, if an importer has imported parts and accessories his import would be of the articles covered by entry 295. The Collector could not say, if they were so covered by entry 295, that, when, lumped together, they would constitute other articles, namely motor cycles and scooters in C.K.D. condition. Such a process, if adopted by the Collector, would mean that he was inserting in entry 295 a restriction which was not there. That obviously he had no power to do. Such a restriction would mean that though under a licertce in respect of goods covered by entry 295 an importer could import parts and accessories of all kinds and types, he shall not import all of them but only some, so that when put together they would not make them motor cycles and scooters in C.K.D. condition."

Those observations apply with equal force to the importation of parts, importation of which was permissible even though those parts when put together were capable of constituting the whole of ball-point pen. Relevant entries in the import policy permitting importation of the parts were not subject to a further condition that a part so imported should not be such as to constitute consumer goods in a knocked down condition.

5. The Supreme Court, in the later decision of Sharp Business Machines Pvt. Ltd.

(cited supra) was concerned with entirely different fact situation. There, the importer had purchased 14 fully finished plain Paper Copiers and then dismantled them for marketing the same in the guise of components of copiers. The Company had submitted application for approval of their phased manufacturing programme to the Development Commissioner, Small Scale Industries. The intent and purpose of the phased manufacturing programme under the Import Policy was to give incentive and encouragement to the new entrepreneurs establishing small scale industries and to permit in the first phase to import 62% of the components and the balance of 38% was to be manufactured by them indigenously. This 62% was to be reduced in subsequent years. The Import Policy was not meant, as found by the Court, for such entrepreneurs, who, instead of importing 62% of the components, imported 100% of the components of fully finished and complete goods manufactured in a foreign country. It was an admitted position that fully finished Plain Paper Copies were prohibited items for import and it was found by the court that what the importer there had done was a device adopted to circumvent a prohibition and was a complete fraud on the Import Policy. It was in those circumstances the Court held that the importation of the parts which were merely parts of dismantled machines which were intended to be put together to constitute a whole machine, was in violation of the Import Policy.

6. The Tribunal was right in the view that it took that the case is governed by the law laid down by the Apex Court in the case of Union of India v. Tarachand Gupta and Bros, (cited supra) and we answer the question referred accordingly.

