(2000) 11 MAD CK 0007

In the Madras High Court

Case No : R.C. No. 7 of 1988

Continental Exporters APPELLANT

Vs

Collector of Cus. RESPONDENT

Date of Decision : 20-11-2000

Acts Referred:

Citation : (2001) 129 ELT 303

Hon'ble Judges : R. Jayasimha Babu, J;K. Gnanaprakasam, J

Bench : Division Bench

Advocate : Krishna Srinivas, for Ramasubramaniam and Associates, for the Appellant; K. Mohar Ram, SCGC, for the Respondent

Judgement

R. Jayasimha Babu, (J)

1. The question raised in this case is as to whether the staplers HD-10 imported by the applicant, who is a manufacturer of garments and who also

had a REP licence for importing industrial staplers, is an industrial stapler for the purposes of the Import and Export Policy, 1983-84.

2. It is the submission of the counsel for the applicant that the policy has to be understood in the light of it''s stated objective set out in paragraph

128, and that Chapter 17 of the Policy which reads as under :

The object is to provide to the Registered Exporters'' by way of import replenishment, the materials (all or some) required in the manufacture of

the products exported.

3. Appendix 17 to that Policy, which refers to cotton ready-made garments, hosiery and knitwear in O.l(ix), refers to ""pearl headed pins/stapling

pins and industrial stapling machines.

4. It is the finding of all the authorities below that the stapling machine

imported, though the machines are capable of, and are widely used in homes

and offices, are used in the manufacturing process of the applicant. All the authorities have stated that the polythene bag, in which garments are

packed, is stapled by using this machine. It is also the case of the applicant that this machine is used even prior to the stage of packing for the

purpose of affixing slips of paper with proper markings and on the cut pieces which are to undergo further processing. It is also the case of the

applicant that the stapiers are used, after the various pieces of garments are stitched together, and the same is sent for button hole making

buttoning, trimming and ironing, for stapling slips of paper with appropriate markings on such lots.

5. Counsel submitted that a reading of Appendix-17 along with para 128 of the Policy would amply demonstrate that the items specified in item 17

are items which are used at one stage or the other in the manufacture of garments and the REP licence issued to exporters of garments being

licences meant to enable them to import some or all the materials required in the manufacture of garments, so long as the items specified in

Appendix-17 are in fact used in the manufacture of garments, their import should be regarded as permissible. It was also pointed out that one of

the items allowed to be imported is pearl headed pins which are used only at the stage of keeping the collar in place after the garment is folded,

and before it is packed in the polythene bag. Such pins are capable of being used and are in fact used by tailors and by those who make dresses at

home. The import is allowed only because it is also used in the garment industry. It was submitted that similarly though the stapler imported viz.

HD-10 is widely used elsewhere, it is sufficient for the purposes of Policy, if such stapler is found to be used in the garment industry.

6. Learned counsel submitted that it would be an incongruous situation where the garment manufacturer is allowed to import staple pins, but is to

be prevented from importing staplers in which those pins are to be used. Reference was made to the decision of this Court in the case of Union of

India and Another Vs. Raj''s Continental Exports Private Limited, , wherein, import of stapler pins of the specification HD-lO(l) was held by this

Court to be permissible, as it was held that that item fell within the ambit of Heading 73.31, which, inter alia, refers to staples of iron and steel. The

Court turned down the plea of the Revenue that it should be regarded as an item of stationery goods falling within a Heading 83.01 which refers,

inter alia, to staples, indexing tags and similar stationery goods. It was the plea of the manufacturer in that case that the staples are used for packing

the readymade garments, and such user did not make it stationery goods, and that it''s specific description as staples made of iron and steel found

in Heading 73.31, was the more apposite entry under which it was required to be treated. The Court held that the description in entry 73 is very

specific when it refers to staplers made of iron and steel, and that the goods imported therein being goods which answer the description, the same

was required to be treated as one falling under Heading 73.

7. Learned counsel for the Revenue on the other hand contended that the REP licence does not give a carte-blanche to the holder of the licence to

import any items of his liking ignoring the list of prohibited item. Counsel pointed out that in the Import Policy for that year, the import of staples

was prohibited. Counsel referred to items in Appendix-1 of the Policy and Entry 16 under Heading 6 of the miscellaneous items. Entry 16 reading

''stapling machine'' in Appendix -1 which is the list of banned items of capital goods. His further submission was that the entries in the list under the

several headings are required to be understood with reference to the principal purpose as required under Note 5 in Chapter 84 of the Customs

Tariff Act, 1975, which states that a machine which is used for more than one purpose is for the purposes of classification, to be treated as if it''s

principal purpose were it''s sole purpose. Counsel also referred to paragraph 244 in Chapter 22 of the policy which provides for the application of

rules for interpretation of the entries in the First Schedule to the Customs Tariff Act, 1975 to the clearance of consignments imported under this

policy.

8. There can be no doubt that the REP licence does not enable the licensee to import any of the prohibited items unless specifically permitted to do

so by the REP licence. The prohibition under Appendix I is against the import of ''stapling machines'' which would include all varieties of stapling

machines, no matter the purpose for which the machine is used. The REP licence granted to the applicant in terms of Chapter 17 of the Policy

carves out an exception from that prohibition against import of stapling machines. The exception is industrial stapling machine. The entries in

Chapter 84 of the Customs Tariff Act do not refer to industrial stapling machines anywhere. In Entry 84.51/55, office machines are referred to and

while making reference to the office machines, examples of such office machines are given. The example so given are : hectograph or stencil

duplicating machines, addressing machines, coin-sorting machines, coin-counting and wrapping machines, pencil sharpening machines, perforating

and stapling machines. Industrial stapling machines are not mentioned in that entry. No other entry which mentions industrial stapling machines in

Appendix I of the Customs Tariff Act has been brought to our notice. Note 5 in that Chapter which says that the use of any of the machines listed

therein which is capable of being used for more than one purpose should be treated as machines intended for it''s principal purpose is, therefore,

not of much assistance in determining the scope of the term ""industrial stapling machine"" used in Appendix-17 to the Policy.

9. The meaning of the term ""industrial"" would depend upon the context in which the term is employed. It certainly connotes organized effort aimed

at bringing into existence a product or at the least the effort applied in an organized manner for the processing of material with a view to bring about

the changes therein. When a machine is qualified by the term ""industrial"", the normal implication would be that what is referred to is a machine used

in the industry, or it is capable of being used in the industry.

10. The literature placed before us does not show the classification of staplers into industrial and non-industrial staplers. The Revenue has not

placed any material. The applicant has placed the brochures issued by the manufacturer which does not describe any of it''s staplers as industrial.

The different varieties of staplers are mentioned therein with the uses to which they can be put. One of the uses for all the machines is for packaging

or for holding several sheets of papers, together which are the most common purposes for which stapling machines are used. When packaging is

done in an industry and the stapling machine is used for that purpose in the industry, the machine can be regarded as having been put industrial use

in the absence of any categorization of stapling machines as industrial, and non-industrial.

11. Although one would generally expect a clear line of distinction between

machineries used in industry and items which have applications in the

home or office, there are cases where the dividing line is thin. The stapling machine is one such which is used in a variety of places for the purposes

of holding things together, or for packaging.

12. In this background and having regard to the object of granting REP licence as set out in paragraph 128 of Chapter 17, the reference to

industrial stapling machines must be construed as referring to stapling machines which are used by the manufacturer to whom the REP licence was

issued, in the manufacture of the products exported by him. It is not disputed here that the product manufactured here being garments, the same

were required to be, and were packed in polythene bags which were stapled, and that the garments in such packaging with the staples were

exported. It is undisputed that the stapling machine is required in the process of manufacture of the manufacturer of garment. To further clarify

matters regarding the manner in which the stapling machine is used in the manufacture of garments, an affidavit of Production Manager of the

applicant has also been filed before us. It has been reiterated there that for the sealing and packing in polythene bags in which the garments are

placed, stapling machine is used. It is also stated that the machine is used to affix papers with the necessary markings of pieces of cloth which

ultimately go up to make the garment. It is also used when swatches of materials are placed with the trim card and stapled making use of model

HD-10 stapler, the card being used to note down the design, number and such other information.

13. If the manufacturer is permitted to import the staples on the ground that it is an article made of iron and steel, he should also be in a position to

make use of those staples which are required for his use in the process of manufacture, and for which, he would require the stapling machine.

14. We are, therefore, satisfied that the industrial stapling machine referred to in Appendix-17 is one which is used by the manufacturer in the

manufacture of garments. We are, however, not to be understood as having laid down as a test in all cases that the user in one location would

make a product permissible for import even when it''s predominant use is elsewhere, and the importation of goods for such use is prohibited.

15. We, therefore, answer the question referred to us at the instance of the

importer manufacturer, as to whether on the facts and circumstances of

the case the decision of the Tribunal that the stapling machine imported by the applicant was not an industrial stapling machine is justifiable, in

favour of the applicant, and against the Revenue.

16. The applicant shall be entitled to costs in the sum of Rs. 1,500/-.

