
(2000) 05 MAD CK 0008
In the Madras High Court
Case No : R.C. No. 1 of 1996

D.E.I. Ltd.

APPELLANT

Vs

Collector of Customs

RESPONDENT

Date of Decision : 29-05-2000

Acts Referred:

Citation : (2001) 74 ECC 322

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

Bench : Division Bench

Judgement

R. Jayasimha Babu, J

1. The issue to be considered is as to whether the firm contract was required to be backed by irrevocable letter of credit in order to entitle the appellant to have the benefit of the import licences dated 21.1.1988 and 27.7.1987 of which, the appellant had taken an assignment on 3.9.1989. Prior to the said assignment, orders were placed by the original licensees on 4.1.1988 and 6.6.1988 and those orders had been accepted by the suppliers in Singapore on 11.1.1988 and 21.6.1988. The goods to be imported were Faximilo Transmission Equipment, 39 numbers, valued at Rs. 7,20,379. The import was actually effected on 16.8.1989 and 31.12.1989.

2. The import trade control policy for the period April-March, 1988-91 only required that the licensee should place a firm order on the foreign supplier within six months from the date of issue of licence. The licence also contains only that stipulation. It is not a requirement either in the licence or in policy, that in addition to the firm order, an irrevocable letter of credit also should have been opened in favour of the foreign supplier. Such a requirement is provided for in the case of goods which are shifted from the open general licence under a public notice. Admittedly, the goods imported by the appellant remained in open general licence (O.G.L.) list and had not been shifted.

3. The assessee had produced before the authorities the order that the original

licensee-Champdany Industries Limited, Calcutta, had placed on the foreign supplier in Singapore on 6.6.1988, as also the letter of the foreign supplier accepting the order and agreeing to keep the price firm for the period stipulated in the order and undertaking to deliver the goods on receipt of, and in accordance with the delivery instructions. Admittedly, pursuant to that order, the delivery instructions were given and the goods were despatched to India and resulted in the importation by the appellant. The order which had been placed with the foreign supplier and the acceptance thereof by the foreign supplier, had resulted in a contract, under which, the Indian licence-holder was required to purchase and the foreign supplier required to sell the goods at the prices stipulated therein. What was left undetermined at the time of the exchange of correspondence, was only the date of despatch and the number of items to be despatched. The supplier was bound to maintain the price for the agreed period. The contracts thus concluded between the parties did not require the opening of irrevocable letter of credit by the importer.

4. The view taken by the Tribunal that the requirement of opening irrevocable letter of credit should be read into the Policy, and read into the requirement of the firm order being placed with the overseas supplier, is clearly an erroneous view. In the absence of any such requirement in the terms of the licence or in the policy, there was no warrant for reading such a requirement into the licence.

5. Firm order" does not imply that the person placing the order should also establish a letter of credit or make any other financial arrangement even at the time of placing the order. As to the terms subject to which the order will be accepted is a matter for the supplier who may or may not insist upon an advance being given or letter of credit being opened. Judicial notice may be taken of the fact that not all orders placed on foreign suppliers are backed by irrevocable letters of credit. It is an accepted mode of trading to provide for payment against delivery or for payment at the time of receipt of the shipping document through the agreed bankers. The Import Policy had also made a conscious distinction between the goods on the O.G.L. and those shifted from O.G.L. under a public notice. The requirement of a letter of credit was added in respect of the goods which had been shifted from the O.G.L. under a public notice.

6. The evidence produced by the appellant, having shown that a firm order had been placed within the period stipulated in the licence, the appellant must be held to have complied with the terms of the licence in the absence of any other infraction on the part of the appellant having been brought out by Revenue. The view of the Tribunal that the additional requirement of letter of credit being opened, should be read into the terms of the licence, is an unsupportable view.

7. We therefore hold that the appellant is entitled to be treated as a licensee in respect of the goods imported and the goods imported as goods legitimately imported into India in terms of the licence. The question referred to us is answered in favour of the assessee and against the Revenue.