

(1995) 07 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No. 1416 of 1987

Prav Electro Spark Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-07-1995

Acts Referred:

Citation : (1995) 60 ECR 600 : (1995) 80 ELT 29

Hon'ble Judges : S.H. Kapadia, J;M.L. Pendse, J

Bench : Division Bench

Judgement

S.H. Kapadia, J.—Being aggrieved by the denial of the benefit of exemption Notification (Exhibit-B to the Writ Petition), the present Petition has been filed.

2. Facts giving rise to this Petition, briefly, are as follows :

3. Petitioners imported in June 1982, universal measuring instrument alongwith a set of probes. Petitioners filed their Bill of Entry on June 14, 1982 for home consumption. Petitioners claimed benefit of exemption under Notification No. 49, dated 1st March 1978 (Exhibit-B). The Customs rejected petitioners' claim for refund. The goods were cleared on payment of duty on June 25, 1982 of Rs. 1,41,302. Thereafter, petitioners filed refund application on July 25, 1982. By an Order dated February 12, 1986, the refund application was rejected by the Assistant Collector of Customs (Refund) on the ground that although measuring instrument with a set of probes was imported, it was not imported alongwith special probes and, therefore. Item 9 of the Notification was not fulfilled. It was also rejected on the ground that the measuring instrument was capable of measuring only internal and external threads and it was not capable of checking gauges, tools, jigs and components thereof. Being aggrieved by the said Order, petitioners preferred an Appeal to the Collector of Customs. By impugned Order of the Appellate Authority, the Collector of Customs (Appeals) rejected the Appeal on 23rd December, 1986. The Collector of Customs also came to the conclusion that Notification No. 49 vide Item 9 required the machine to measure all the parameters mentioned in Item 9 and since special probes were not

imported by the petitioners alongwith the measuring instrument, the conditions for claiming exemption have not been fulfilled. Being aggrieved by the said Orders rejecting refund application, the present Writ Petition has been filed.

4. Mr. P. D. Shah, the learned counsel appearing on behalf of the petitioners contended that as the machine needed accessories to do the work of measurement, the entry at Serial No. 9 has to be interpreted to mean that the machine should be capable with the help of accessories of measuring any of the listed parameters. Mr. Shah contended that it is the imported machines, design and concept for measurement that was relevant and not the presence or absence of accessories. Mr. Shah contended that in the circumstances, the imported goods were entitled to the benefit of the said Notification. On the other hand, it was contended by Mr. S. M. Shah, the learned Advocate for the respondents that in the present case, all the parameters mentioned under Item 9 of the Notification cannot be fulfilled in the absence of special probes. In the circumstances, it was contended by Mr. S. M. Shah that the benefit of the Notification cannot be given to the petitioners. We find merit in the contentions advanced on behalf of the petitioners. Petitioners have imported the Measuring Instrument. The literature in support of the said imports indicate that probes which have been imported alongwith the Measurement Instrument were sufficient to measure internal and external threads and that special probes were not required to be imported alongwith the Measurement Instrument. It is not necessary that all the parameters mentioned in Item 9 are required to be fulfilled. If the Measuring Instrument alongwith the probes imported is capable of measuring threads, both internal and external, even without special probes, then the conditions of the Notification vide Item 9 stand fulfilled. All universal measuring machines have accessories without which they cannot do the work of measurement. In the present case, the Importers' needs were limited and, therefore, he was not required to import all the accessories. The petitioners have imported the probes which is not in dispute. What is in dispute is that special probes have not been imported. The petitioners were not required to fulfill all the parameters. In the circumstances, we find merit in the petitioners' contention that Entry at Serial No. 9 of the Notification has to be interpreted to mean that the machine should be capable with the help of accessories, if necessary, of conducting the measurements. It is the imported machines, designs and capacity for measurement that matters and not presence or absence of special accessories. Mr. P. D. Shah, the learned counsel for the petitioners also drew our attention to the judgment of CEGAT in the case of 1988 (17) ECC 234 . We approve the ratio of the said judgment in the case of Kinetic Engineering (supra).

5. In the above circumstances, the impugned Orders are set aside and the matter is remitted back to the Assistant Collector of Customs (Refund) only for the purposes of verification of the claim of the petitioners who are entitled to refund, as stated above.

6. Accordingly, Writ Petition is disposed of with no order as to costs.