(2003) 01 SC CK 0041

In the Supreme Court Of India

Case No : Civil Appeal 4025 of 1995

Super Electronics APPELLANT

Vs

Collector of Customs, Bombay RESPONDENT

Date of Decision : 28-01-2003

Acts Referred:
Customs Act, 1962 — Section 112

Citation : (2003) 85 ECC 716 : (2003) 158 ELT 254 : (2003) 11 SCC 446

Hon'ble Judges : M. B. Shah, J;Arun Kumar, J

Bench : Division Bench

Advocate : A.R. Madhav Rao, Alok Yadav, Vishwanath Shukla and V. Balachandran, for the Appellant; G. Venkatesh Rao and B.K. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Shah, J.—In December 1990 appellant--M/s. Super Electronics imported two consignments of 500 sets of optical disc drives from Lucky Gold Star International Corporation of Korea. It is the contention of the appellant that optical disc drives were imported for the manufacture of radio cassette recorders in combination with CD players (compact disk. players). The goods were sought to be cleared under Appendix 6 List 8 at Entry Sr. No. 786 (64)(iii) of ITC Import Export Policy 1990 -1993. The said entry reads thus:

"(64) Computer Peripherals, the following: (i) Winchester Drives. (ii) Magnetic Tape Drives, (iii) Optical Disc Drives/CDROM/WORM drive....."

2. It is the contention of the learned counsel for the respondent that optical disc drives could be imported by the manufacturers or actual users and not by the appellant who is manufacturing radio two-in-ones.

3. It was also contended that the appellant had industrial licence to manufacture radio/cassette-recorders and combination thereof and they were not allowed to manufacture under the said licence combination of radio cassette recorders with

C.D. players.

4. After issuance of the notice to the appellant during the adjudication proceedings, it was pointed out that the Department of Electronics vide their clarification dated 6.4.1990 have confirmed that the item imported was compact disc mechanism which is also known as optical disc drive. It was also pointed out that under the ITC Policy of 1990-1993 the item is covered under Serial No. 730 of Appendix 3 Part - A for which appellant submitted valid REP licence. Appellant also produced the letter dated 9.3.1990 from the Chief Controller of Import & Exports according to which optical disc drives are permitted to be imported under OGL Entry No. 64 as electronic items and these items therefore can be permitted to be imported against additional licence granted to the export houses/trading houses.

5. The Additional Collector held that goods imported have been described by the manufacturers in the bill of entry as optical disc drives for radio cassette recorders with combination thereof.

6. However, it was noted that the Department of Electronics have clarified that the scope of two-in-one was limited to radio cassette recorder/player and it does not cover combination of radio cassette recorded with C.D. player. Since in India C.D. players in combination of radio cassettes recorded were not permitted to be manufactured at the relevant time. Finally, Additional Collector arrived at the conclusion that importer was liable to penalty u/s 112 of the Customs Act for the wilful misdeclaration of the value of the consignment as well as for importing the goods without import licence wilfully. He, therefore, ordered confiscation of 500 sets of optical disc drives valued at GIF Rs. 3,56,850 and gave an option to the importer to redeem the same on payment of fine of Rs. 6 lacs while a penalty of Rs. one lac was imposed u/s 112 of the Customs Act.

7. Appellant preferred Customs Appeal No. C/403/92-A before the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (for short 'the Tribunal'). The Tribunal arrived at the conclusion that OGL Entry covered optical disc drives for computer peripherals, while the goods imported were sub-assembly and CD disc mechanism and were covered under Entry No. 176 of Appendix 2 Part- B of the ITC Policy 1990-93. However, considering the entire evidence produced on record and the fact that appellant had imported such items in the year 1989 the Tribunal held thus:

"116. Taking all the relevant considerations in view and keeping in view the above discussions with regard to the facts and circumstances, we find that while the goods have been imported without proper licence and were rightly confiscated by the Additional Collector the charge regarding under valuation has not been proved in the circumstances of the case.

117. As regards the personal penalty we find that the importer M/s Super Electronics were liable to penalty but in the circumstances of the case, we reduce the amount of penalty from Rs. 11 lakh to Rs, 50,000 (fifty thousand) only. The

amount of redemption fine of Rs. 6 lakhs is also reduced to Rs. 3 lakhs only."

8. That order is challenged by filing this appeal. It has been pointed out by the learned counsel for the appellant that appellant was permitted to import similar goods in the year 1989 for its industrial use. He also submitted that there is no prohibition under the industrial licence given to the appellant that it cannot use CD disc drives in combination of radio cum cassette players, popularly known as two-in-ones. In any case, it is their submission that appellant bona fide believed that it was entitled to import such goods under the OGL To avoid the dispute also, it had produced a REP licence for the relevant period.

9. Considering the facts of the present case it is apparent that appellant was having bona fide belief that it was entitled to import the goods in question for its industrial use. It had imported similar goods earlier also. This Court in Akbar Badrudin Jiwani of Bombay Vs. Collector of Customs, Bombay, considered the various decisions rendered by this Court in paragraph 59 and relied upon and quoted the decision of this Court in Hindustan Steel Ltd. Vs. State of Orissa, . This was also a case of levy of penalty in addition to the tax for failure to register itself as a dealer. The Sales Tax Officer had taken the view that the appellant was a dealer in building material and had sold building material to contractors. On that account it was liable to pay tax at the appropriate rates under the Orissa Sales Tax Act. The Sales Tax Officer directed the company to pay tax due for 10 quarters ending December 31, 1958 and penalty in addition to the tax for failure to register itself as a dealer. While considering the question of levy of penalty this Court observed : (sic)

10. Considering the facts of the present case it is apparent that the appellant had acted bonafide and there was no deliberate attempt on its part to import goods against the policy. In this view of the matter it will be appropriate to take a lenient view with regard to imposition of redemption fine and the penalty. Accordingly, the redemption fine is ordered to be reduced to Rs. 1,00,000 in place of Rs. 3,00,000 and the penalty amount is reduced to Rs. 25,000 in place of Rs. 50,000. The appeal stands disposed of accordingly with no order as to costs.

