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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/966 /2005 - CU[DB] Date 23/10/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S INTERIA IMPEX
487/18, PEERA GARHI, DELHI
110087

M/S INTERIA IMPEX Appellant
Vs
THE COMMISSIONER OF CUSTOMS, DELHI IV, Respondent
FARIDABAD

I am directed to transmit herewith a certified copy of Final order No.C/422/08 CU[DB] dated 16.10.08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
THE COMMISSIONER OF CUSTOMS, DELHI IV, FARIDABAD
NEW CGO COMPLEX, NH- IV, FARIDABAD
2. Adv. / Consult
MR.PIYUSH KUMAR,ADV
B-25,LAJPAT NAGAR-III,N.DELHI
3 S.D.R
4 J.C.D.R.
5 Bar association. CESTAT. New Delhi
6 M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd.. 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 Nidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
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Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing:26.9.2008
Date of pronouncement: 16.10.2008

Customs Appeal No.966 of 2005

Arising out of the order in appeal No.11/Cus(Appl/DLH-IV/2005 dated 6.9.2005 passed by the Commissioner (Appeals),Central Excises, New Delhi.

For Approval and Signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellant — Respondent

M/s Interia Impex vs. C.C., Faridabad

Appearance:

Shri Piyush Kumar, Advocate for the appellant
Shri A.K. Madan, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Order No. C/422/08.

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. dated 6.9.2005.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:

a) The appellant imported a consignment of old and used machines from Liverpool, United Kingdom; the consignment landed in the port of Nhava Sheva and transhipped to ICD, Ballabgarh, Faridabad; and they filed bill of entry No.002451 dated 4.9.04 at the ICD. On examination, the machines were found to be more than 10 years old. The value was enhanced by the original authority on the basis of the report by the Chartered Engineer from GBP 15000 to GBP 17325. He confiscated the goods on the ground the import of the old machines required a specific licence which was not produced but allowed redemption of the same on payment of fine of 3.75 lakhs and imposed a penalty of Rs.50,000/-.Commissioner (Appeals) upheld the confiscation under Section 111(d) on the ground that at the import licence was required. He also upheld the enhancement of value based on govt. approved valuer for the purpose of assessment.

4.1. The learned Advocate is not contesting the enhancement of the value. The requirements of a licence for import of machinery of over 10 years has been dispensed with vide Notification No.1/2004 dated 31.8.2004. and ,therefore, there was no need for production of any import licence. The consignment of old machineries shipped from Liver Pool in U.K. reached Nhava Sheva and ICD, Ballabgarh, Faridabad prior to 1.9.2004. The bill of entry was filed on 4.9.04 and actual clearance took place on 9.11.2004. He conceded that they did not have the licence when they placed orders, and they did apply for one till the goods were cleared.

4.2. When the goods requiring a licence were imported without a licence, clearance of such goods could be made on the basis of licence obtained licence/certificate/permission issued subsequently in terms of para 2.26 relating to "clearance of goods from Customs" of the Exim Policy and Handbook of Procedure applicable as on 28.1.2004. The said para reads as follows:

> "**Clearance of Goods from Customs:**
>
> *The goods already imported/shipped /arrived, in advance, but not cleared from Customs may also be cleared against the licence/certificate/permission issued subsequently."*

Even if they had applied to the DGFT authorities for issue of licence/ permission, they were bound to deny the same as redundant as the requirement of licence has been withdrawn.

5. The learned DR submits that the period of validity of any licence certificate/permission should be examined with reference to the date of

shipment/despatch of the goods. He relies on para 2.12.2 of Handbook of Procedure which reads as under:

> *"The period of validity means the period for shipment/dispatch of goods covered under the licence/certificate/permission. The validity of an import licence/certificate /permission is decided with reference to the date of shipment/dispatch of the godos form the supplying country, as given in paragraph 9.11 of this Handbook and not the date of arrival of the goods at an Indian Port."*

6.1. We have carefully considered the submission of from both sides. The short point involved is the relevant date for the purpose of considering the requirement of licence. Section 2 (23) of the Customs Act defines import as follows:

> *"(23) 'Import', with its grammatical variations and cognate expressions, means bringing into India from a place outside India."*

The Section 2(27) of said Act defines India as follows:

> *"(27) 'India' includes the territorial waters of India."*

A combined reading of the above definitions make it clear that "import" is complete as soon as the ship carrying the goods reach the territorial waters of India. It is conceded that the import of the impugned consignment was completed prior to 1.9.2004 and that they did not have the required licence at the time of import.

6.2. Section 111(d) provides that

"any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force"

are liable for confiscation. A reading of 111(d) makes it clear that the obligation to produce a valid licence is with reference to the event "import" which is complete when the goods reach the territorial waters of India.

6.3. However, certain relaxations have been provided for in the policy. If an importer was having a valid licence at the time of shipment at the Port of loading but by the time the goods were imported i.e. when the goods reached the territorial waters of India, the period of validity of licence expired, it has been specifically provided for, by way of concession and relaxation, to treat the licence as valid for the import. This is the implication of clause 2.12.2 relating to "Validity of Import Licence/Certificate/Permission/CCP". In other words, the licence which was valid as on date of shipment has been held valid on the date of import. Similarly, in a case when an importer was not having the licence/certificate/permission at the time of import such import is certainly in violation of the prohibition. However, if he approaches the DGFT authorities and gets a licence on any date subsequent to date of arrival of goods but before clearance, the same is also accepted as valid import. This is also by way of concession and relaxation. Though the licence has been obtained subsequent to date of import, in view of procuring the licence subsequently, the same was sought to be regularised. This is the implication of the provisions in para 2.26 relating to "Clearance of Goods from Customs".

7. In the present case, admittedly, the importer did not have the licence at the time of shipment or at the time of import or at any time before the clearance. Any prohibition imposed under any relating to import or export is held to be a prohibition under the Customs Act. The Section 159A of the Customs Act relating to effect of amendments of Rules and Regulations and Notification may be relevant. The relevant portion of the said Section is reproduced below:

> ***"Section 159A. Effect of amendments, etc. or rules, regulations, notifications or orders*** – *Where any rule, regulation, notification or order made or issued under the Act or any notification or order issued under such rule or regulation, is amended, repealed, superceded or rescinded, then unless a different intention appears, such amendment, repeal, supercession or rescinding shall not –*
>
> *(a)* ....
>
> *(b)* ......
>
> *(c)* *affect any right, privilege, obligation or liability acquired , accrued or amended, repealed , superseded or rescinded; or*
>
> *(d)* ....
>
> *(e)* ......
>
> *and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the rule, regulation, notification or order, as the case may be, had not been amended, repealed , superseded or rescinded".*

8. Therefore, the obligation of the appellant to possess a valid licence at the time of import (that is when the goods entered into territorial waters of India) cannot be wiped out by the amendment dated 31.8.2004 by which the requirement of licence was lifted. The provisions in para 2.26 relating to "Clearance of Goods from Customs" do not apply the present case. Therefore, the

violations are proved and the goods are rightly confiscated under Section 111(d) of the Customs Act.

9. However, having regard to the facts and circumstances of the case, the redemption fine is reduced from Rs.3.75 lakhs to Rs.1.50,000/- (rupees one lakh fifty thousand) and a penalty from Rs.50,000/- is reduced to Rs.25,000/- (rupees twenty five thousand).

10. The appeal is disposed of in above terms.

(Pronounced in the open Court on 16 .10.2008)

(Justice S.N. Jha)
President

(M. Veeraiyan)
Member (Technical)

scd/