M/S. Auto Tractors Ltd., Pratapgarh

Vs

Collector of Customs, Bombay

Civil Appeal Nos. 850-852 of 1988

(Rangath Misra, S. Ranganathan JJ)

19.01.1989

JUDGMENT

RANGANATHAN, J. –

1. The appellant, M/s. Auto Tractors Limited, is a company manufacturing tractors. For purpose of manufacture, the company imports certain parts and components from abroad.

2. There are two notification of the Government of India granting certain concessions from the levy of customs duty which are applicable to such goods as have been imported by the appellant. The first of these, namely, Notification No. 200/79 dated September 28, 1979 (as amended from time to time) exempts components "required for the manufacture of heavy commercial motor vehicles..... or of tractors" from so much of the customs duty as is in excess of 25 per cent ad valorem and the whole of the additional duty leviable thereon. The grant of the concession was subject to the fulfilment of certain conditions specified in the notification. The second notification was Notification No. 179/80 dated September 4, 1980 (as amended from time to time). This notification confers an exemption in respect of parts of articles falling under specified headings in the First Schedule to the Customs Tariff Act, 1975. These admittedly included parts required for the purpose of the initial setting up or for the assembly or manufacture of "tractors", this being an article falling under the heading No. 87.01 (1) of the First Schedule above referred to. This exemption was in respect of so much of the customs duty as is in excess of the rate applicable to the said article (i. e. tractor) when imported complete. This concession was again subject to a certificate and recommendation from certain specified authorities, one of whom is the Directorate General of Technical Development (DGTD). The relief available to the assessee under the first notification of 1979 is, apparently, larger than the one available under the second notification of 1980.

3. The appellant company imported three consignments. Each of the consignments was cleared after production of a certificate from the DGTD in the following terms :

> Certified that M/s. Auto Tractors Ltd., Lucknow are holding a valid Industrial Licence for the manufacture of agricultural tractors and have an approval manufacturing programme. It is further certified that the above components of agricultural tractors, which fall under ICT No. 87.01 (1) qualify for concessional rate of import duty in terms of Custom's Notification No. 179/F No. 370/99/79-CUS. I, dated September 4, 1980.

Apparently, since the certificates of the DGTD referred only to Notification No. 179/80, the appellant was granted the concession available under the said notification. The appellant cleared the

goods, availing itself the said concession, in March, May and June 1981.

4. Subsequently, the appellant appears to have realised that it was entitled to the large concession available under Notification No. 200 of 1979 and that it had erred in clearing the goods after payment of duty subject only to the smaller concession available under Notification No. 179 of 1980. The appellant therefore filed three refund applications in August, September and October 1981 claiming refund to the extent of Rs. 1,55,342.50, Rs. 1,28,350.05 and Rs. 6,46,415.44, being the difference between the entitlements of concession under the two notifications in question. It also appears that the appellants subsequently applied to the DGTD for an amendment of the original certificates to make it clear that the goods imported by the appellant were eligible for the concession under Notification No. 200 of 1979. The DGTD on such application issued a certificate to the following effect :

> Certified that M/s. Auto Tractors Ltd., Pratapgarh are holding an Industrial Licence to manufacture agriculture tractors and have an approved manufacturing programme. It is further certified that the items listed above are components of agricultural tractors falling under ICT No. 87.01 (1) and are eligible for concessional rate of import duty under custom Notification No. 200/79 and 52/81 as extended by Custom's notification No. 81/81 and 82/81 both dated March 28, 1981.

This supersedes the earlier duty concession certificate issued by this office, vide Notification No. 179/F No. 370/99/79-CUS I, dated September 4, 1980 under this officer letter No. DD-II/5 (49) /79 Ag., dated January 16, 1981.

These amended certificates were also produced before the customs authorities.

5. The assessee's prayer for refund was however rejected by the Assistant Collector of Customs on the ground that the assessee had failed to produce "end-use" certificates. The assessee's appeals to Collector of Customs (Appeals) also failed. There were further appeals to the customs, Excise and Gold (control) Appellate Tribunal, which by its order dated October 23, 1987, dismissed the appeals of the appellants and hence the present appeals.

6. The Tribunal disposed of the assessee's claim by a short order. It observed that the Notification No. 200/79 entitle an assessee to the concessions therein mentioned on the fulfilment of three conditions :

> (i) A manufacturing programme as duty approved by the Director-General of Technical Development (DGTD) should be produced at the time of clearance of the goods. (ii) The list of components and goods should be produced duly certified by the DGTD; and (iii) An end-use certificate from the same Directorate to be produced in due course in regard to the consumption of goods in the manufacture of the motor vehicles or tractors, etc.

The Tribunal proceeded to observe :

> The first statutory condition of the notification that the manufacturing programme of the appellants as approved by the DGTD should have been produced before the Assistant Collector at the time of clearance of the goods was not fulfilled by the appellants. As a matter of fact at the time of clearance of the goods there was no claim even by the appellants under Notification Nos. 200 and 201/79-Cus. Their

claim at that time was under different notification No. 179/80-Cus. which contained no requirement to produce an approved manufacturing programme. Since the statutory wording of the notification made it imperative for the appellants that the approved manufacturing programme should have been produced at the time of clearance and since this condition was not fulfilled, the entitlement of the appellants to the exemption is not accepted.

5. The approved manufacturing programme was available all along with the appellants yet they did not produce it at the time of clearance before the Assistant Collector.

7. We have heard the learned counsel for the appellant as well as learned Additional Solicitor General and we are of the opinion that the Tribunal has erred in denying the appellant the benefit of the Notification No. 200 of 1979. This notification made the availability of the concession thereunder subject to three conditions of which one alone is relevant for our purposes. The Tribunal thought that this condition was that the approved manufacturing programme should have been produced at the time of clearance and it has denied the assessee the benefit of the concession, even though satisfied that the approved manufacturing programme was all along available with the assessee, because such programme was not produced at the time of the clearance. The Tribunal has committed an error in its reading of the relevant conditions of the notification. The condition is not that the manufacturing programme should be produced but that "the importer should produce evidence to the Assistant Collector of Customs at the time of clearance of the components or the goods that they have a programme duly approved by the Ministry of Industry and the Industrial Adviser or Additional Adviser of the Directorate General of Technical Development of Ministry of Industry for the manufacturing of such motor vehicles... or of tractors". In other words, the importer had only to satisfy the customs authorities that it had an approved industrial programme for the manufacture of tractors by production of a certificate from the DGTD. It is indeed common ground before us that the second set of certificates issued by the DGTD constitutes sufficient evidence that would entitle the appellant to the concession under Notification No. 200 of 1979. But the argument is that the amended certificates were produced not at the time of the clearance of the goods but only much later and that therefore the appellant is not entitled to the concession under the said notification. There is a fallacy in this approach, for, even ignoring the subsequent amendment of the certificates, we are of the opinion that the production of the original set of certificates at the time of clearance of the goods was sufficient compliance with the terms of the notification in question. We have extracted the terms of this certificate earlier. It is an unequivocal certificate by the DGTD that the appellants hold a valid industrial licence for the manufacture of agricultural tractors and that it also has an approved manufacturing programme. That is all the second set also says. There is therefore no doubt that the assessee had produced evidence, in the form of the said certificate, of the fact that the appellant had an approved industrial programme. This was the only requirement of the notification and this requirement has, in our opinion, been complied with. The further words in the first set of certificates that the assessee was eligible for the concession under 1980 notification were mere surplusage. The omission of the assessee to request the DGTD to refer to the assessee's entitlement under the 1979 notification or the omission of the DGTD to refer to the assessee's entitlement under the 1979 notification cannot take away the assessee's rights. The grant of concession depends on a certificate that the assessee had an approved manufacturing programme - which is there - and not the reference therein to the notifications that can be availed of by the assessee. We are therefore of the opinion that the order of the Tribunal should be set aside and that the assessee should be held entitled, in respect of the three consignments referred to earlier, to the concession available under Notification No. 200 of 1979. We direct accordingly. The appeals are allowed but having regard to the circumstances we make no order as to costs.

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