SUPREME COURT OF INDIA

M/S. K.R.Steel Union Ltd.

Vs.

Commissioner of Customs, Kandla (Gujarat).

C.A.No.6769 of 1999

(S.P. Bhuracha, N. Santosh Hegde and Y.K. Sabharwal JJ.)

30.03.2001

JUDGMENT

Santosh Hegde, J

1. This appeal is directed against the order of the Customs, Excise and Gold (Control) Appellate Tribunal, (the tribunal), West Regional Bench, Mumbai dated 15th July, 1999 made in Appeal No.C/366/94A.

2. The appellant which is an approved unit situated in the Kandla Free Trade Zone (KFTZ) was authorised to manufacture one lakh ton of Cold Rolled Closed Annealed (CRCA) and Tin Mill Black Plate (TMBP) Coils per year under a licence issued by the Ministry of Commerce, Government of India on 30.3.1981. The said Ministry by a letter dated 2.7.1982 approved the proposal of the appellant for import into the KFTZ of second-hand machinery for the purpose of the manufacture of the CRCA and TMBP under certain conditions which included that the imported machineries should not be over 10 years old and it should have a residual life of at least 5 years. Based on the said permission, the appellant imported between the period 1983 and 1987 second hand machineries as capital goods for which they had filed as many as 17 Bills of Entry and claimed the benefit of Notification No. 77/90-Cus. dated 17.4.1980. On 7.2.1992, the Customs Authorities issued a show-cause notice to the appellant alleging among other grounds that the appellant had imported contrary to the import licence, one new Thyristor Converter over and above the Motor Generator Set, a part of the Temper Mill and certain quantity of ceramic wool as a new component for the purpose of fabrication of the Bright Annealing Furnace.

3. In the proceedings before the Collector of Customs, the appellant contended that the import was made with the permission of the authorities of KFTZ issued to them vide permission letter No.FTZ/Adm/2/822/90-IV/4750 dated 25/30.4.1991. They also contended that the import made by them was governed by the import export policy applicable for the year 1983-84 and the Thyristor Converter system was imported as a part of the complete Temper Mill which was in a second-hand condition. The said Thyristor Converter though was a new part of the Temper Mill, the same constituted in value equivalent to only 9% of

the total value of the Temper Mill and this particular machinery part was imported as an alternative to Motor Generator Set which was supplied in a non working condition by the supplier. Similarly, it was contended that so far as ceramic wool which was also a new component of the annealing furnace, the same had to be new since the said ceramic wool had a limited life span, hence when a second-hand annealing furnace was to be installed, it was imperative that the ceramic wool in the same had to be replaced with new wool because the old ceramic wool had outlived its utility.

4. The Collector as per his order dated 31.3.1993 substantially dropped the charges levelled in the show cause notice and came to the conclusion that the machineries imported viewed as a whole was substantially old and that the Thyristor Converter was an essential part of the Temper Mill, and except for this particular part all other components of the Temper Mill were second-hand. He was also of the opinion that the ceramic wool which was a part of the annealing furnace was a periodically replaceable part, hence, same cannot be individually treated as a new machinery, therefore, was of the opinion that the import in question was covered by Notification 77/80-Cus. and that the entire imported machinery after fabrication remained within the KFTZ and was used for the purpose of export production, accordingly he did not consider it necessary to either impose the penalty and duty as reflected in the show-cause notice nor did he think it necessary to confiscate the goods.

5. As noticed above, the Department being aggrieved by the said order of the Collector filed an appeal before the tribunal, who by its order dated 6.8.1989 allowed the Departments appeal holding that the import in question was in contravention of the import export policy as well as the Notification issued thereunder and was also made without the approval of the KFTZ Board. Consequently, it remanded the matter to the Commissioner for the limited purpose of adjudicating the liability of the respondent to pay penalty for the irregularity committed in the import. It is against this order of the tribunal the above appeal is preferred.

6. The only question that arises for our consideration in this appeal is whether the import of Thyristor Converter and the ceramic wool by the appellant as parts of the Temper Mill and Bright Annealing Furnace is in contravention of the import permit issued to the appellant.

7. In this regard, it is to be seen that under the import licence issued to the appellant, it was permitted to import into India second-hand machinery of the following descriptions:

> "(a) Temper Mills; (b) Reversing Cold Reduction Mill; (c) Continuous Pickle line; (d) Bright Annealing Furnace Facility; and (e) Reconditioned secondhand cylindrical roll grinding mines."

8. This permission does not indicate that each and every part of the above machinery should necessarily be second hand. It is seen from the order of the Collector that after examining the machinery in question, he came to the conclusion that the import of Thyristor Converter and ceramic wool was as a small part of the larger machinery permitted to be imported for the manufacture of 1 lakh tons of CRCA and TMBP Coils per annum which production was purely for the purpose of export. These two imported items in the opinion of the Collector

were integral parts of the larger machinery permitted to be imported. In his opinion these parts could be imported because they are being used in connection with the production of goods for export. Therefore, he held that the materials imported by the appellant were covered as components for assembling certain capital goods which will be used for production of goods for export. He also noticed the fact that since the Temper Mill, furnaces and other equipments imported after fabrication has to remain in the KFTZ and will be exporting all its production, keeping in mind the object of the Notification, he did not think it was necessary to invoke the provisions of Section 111(d) and 112(a) of the Customs Act on the facts of this case. But the tribunal has differed from this view taken by the Collector holding that the Notification in question did not permit the import of any new part or replacement material and further held that the Notification in question being an exemption Notification, the same will have to be construed strictly, hence, the extended meaning sought to be given by the Collector to the words: for being used in connection with production was rather fanciful.

9. In our opinion, a Notification like the one which falls for our consideration (77/80-Cus.) cannot be read in a narrow manner so as to defeat the object of the Notification because the notification in question permits the importation of certain second-hand machinery to be used in the manufacture of goods meant only for export in units situated in the defined Zones. The object and purpose of such exemption notification is to encourage exports by granting exemption from customs duty on materials that are required to be imported for the purpose of manufacture of resultant products which are to be exclusively exported. The words of the notification have to be construed keeping in view the said object and purpose of the exemption. This is also the view taken by this Court in the case of *Oblum Electrical Industries Pvt.Ltd., Hyderabad vs. Collector of Customs, Bombay*[1]. This Court in that case while construing the words: materials required to be imported for the purpose of manufacture of products found in Notification 116-88-Cus. similar to the Notification involved in this case held:

> "The wordings in the notification have to be construed keeping in view the said object and purpose of the exemption. In the notification two different expressions have been used, namely, materials required to be imported for the purpose of manufacture of products and replenishment of materials used in the manufacture of resultant products which indicates that the two expressions have not been used in the same sense. The former expression cannot be construed as referring only to materials which are used in the manufacture of the products. The said exemption must be given its natural meaning to include materials that are required in order to manufacture the resultant products. On that view, the exemption cannot be confined to materials which are actually used in the manufacture of the resultant product but would also include materials which though not used in the manufacture of the resultant product are required in order to manufacture the resultant product."

10. We respectfully agree with the view taken by this Court in the above cited case and in that view of the matter we are of the opinion that the tribunal erred in reversing the finding of

the Collector by adopting a very narrow approach while construing the words for being used in connection with the production of goods for export.

11. Coming to the factual matrix of the case, we see while the Collector came to the conclusion on facts that both the Thyristor Converter and the ceramic wool were only small parts of the larger machinery permitted to be imported, the tribunal proceeded on a technical ground that since these parts were new it required special permission of the Board without examining whether the object of the import could have been achieved by either not importing the said parts or by importing old Thyristor converter or used ceramic wool. As a matter of fact, if the tribunal had come to the conclusion that either the Thyristor converter or the ceramic wool were not necessary parts of the Temper Mill and the furnace, or that these parts were being imported for purposes other than for the use in the Temper Mill and the furnace then the view taken by the tribunal could have been justified. But once it came to the conclusion that both the Temper Mill and the annealing furnace is imported in a second hand condition and these parts were necessary for the working of that machinery, it ought not to have interfered with the order of the Collector because these parts even though new were only a small constituent of the larger machinery. In the instant case, the Thyristor Converter constituted only 9% of the total value of the Temper Mill while ceramic wool which has a life span of only 5 years had to be replaced because the furnace without the same would not have performed to its optimum capacity with the old ceramic wool. In our opinion, unless it can be established that in the guise of importing a second hand machinery in fact the importer has imported substantially a new machinery, it is not possible to come to the conclusion that the import was in contravention of the import licence keeping in mind the object of the import licence granted to the appellant.

12. We also notice while coming to the conclusion that the Thyristor Converter is an absolute necessity the Collector relied on the Inspection Report of M/s. Dona Electricals Pvt.Ltd. The said Inspection Report given after examination of the concerned machinery and its drawings had stated : in the absence of complete M.G. system, a substitute Thyristor control system is only alternative and imperative. This observation in the Inspection Report relied upon by the Collector clearly shows that the Temper Mill would be incomplete and be of no use without the import of Thyristor control system. Therefore, the finding of the tribunal that the report of M/s. Dona Electricals does not support the view taken by the Collector also cannot be sustained.

13. In regard to the import of the ceramic wool, it is to be noted that the Collector came to the conclusion that the said ceramic wool is a component which is fitted into the furnace as a periodically replaceable part and in the normal course has a life span was only five years. Therefore, in his opinion, while importing second-hand annealing furnace if the importer has replaced the periodically replaceable ceramic wool with a new one which also has a limited life span, same cannot be construed as importing a new machinery because in the opinion of the Collector there is nothing improper in importing second-hand machinery with certain parts which require periodical replacement with new parts so long as the nature of the basic machinery so imported remains to be a second-hand machinery. The tribunal though agreed with the finding of the Collector that the ceramic wool is a periodically replaceable part still

held prior permission of the Board was necessary for such machinery which we find difficult to sustain in the view taken by us herein above.

14. For the reasons stated above, we are in agreement with the view expressed by the Collector, hence, we reverse the finding of the tribunal to the extent it is challenged before us. We make it clear that the appellant has not questioned the finding of the tribunal in regard to the import of special steel plates weighting about 11 M.T. To this extent, the order of the tribunal remains undisturbed and as directed by the tribunal the matter shall stand remanded to the Commissioner for considering the liability of the appellant to pay penalty for the unauthorised import of the said special steel plates.

The appeal is allowed to the extent aforestated. No costs.

[1]*(1997 (7) SCC 581)*