

2014 (3) ECS (235) (Tri - Mum)

In The Customs Excise & Service Tax Appellate Tribunal

West Zonal Bench, Mumbai

C C (IMPORT), MUMBAI

Vs.

M/S RAMKY INFRASTRUCTURE LTD.

Date o Hearing: 14.2.2014

Date of Decision: 23.5.2014

APPEAL Nos. C/1108, 1109/12, 85089, 86176, 86431/13-Mum
(Arising out of Orders -in- Appeal No. 835/MCH/DC/Gr.VA/2012
dated 10.10.2012, No. I60/MCH/DC/Gr.VA/2013 dated 4.3.2013.
No. 849/MCH/DC/ Gr.VA/ 2012 dated 12-10-2012, No. 04/
MCH/DC/ Gr.VA/2013 dated 2.1.2013 andNo. 924/MCH/DC/
Gr.VA/2012 dated 21.11.2012 all passed by commissioner of
Customs (Appeals), Mumbai-I)

Appearance:

Shri D. Nagvenkar, Additional Commissioner (AR).

For the Appellant

Shri T. Viswvanathan, Advocate

Shri Anil Balani, Advocate

Shri Prasad Pranjape, Advocate

Shri J.H. Motwani, Advocate

Shri Prashant Patankar, Consultant.

For the Respondent

CORAM:

Hon'ble Mr. S.S. Kang, Vice President

Hon'ble Mr. Ashok Jindal, Member (Judicial)

Hon'ble Mr. P.R. Chandrasekharan, Member (Technical)

Order No. M/914/14/ CSTB /C-I

" From the purchase order and from the packing list, we find that the accessories i.e. bolt-on extensions were separately ordered. In a situation, when bolt-on extensions are not imported, the relevant question would then be whether the machines still qualify for exemption under Notification 21/2002. Certainly, the benefit of the Notification is not available to such machine.....When the machine has been imported with accessories, whether the benefit of the Notification is available. The mere import of the accessories with the machine cannot change the

basic character of the machine. As per the Webster New International Dictionary, accessory is `an object or device not essential in itself but adding to the beauty, convenience, or effectiveness of something else. The machine is complete in itself without the accessories." (Para 8)

Per: S.S. Kang:

The following issue is referred to the Larger Bench':-

"Whether the machine imported by the respondents, i.e. "Electronic Sensor Pavers Vogele - Model Super 1800-2 with AB 600-2 TV Screed of working width upto 9.5 meters for laying Bituminous Pavement" is entitled or exemption under Notification No.21/2002-Cus. dated 1.3.2002, Sr.No.230 (Sr.No.2 of List 18) or not".

2. The Tribunal in the case of Gammon India Ltd. vs. CC(I) Nhava Sheva reported in 2013 (298) ELT 740 held that the Electronic Sensor Paver Vogele - Model 1800-2 with AB 600-2 TV Screed of working width upto 6 meters is not entitled for the benefit of Notification No.21 /2002-Cus. dated 1.3.2002. In the present case, the Referral Bench has taken a different view that the machine with accessories of bolt-on extensions is capable of laying bituminous pavement more than seven meters and referred the matter to the Larger Bench.

3. The brief facts of the case are that the respondents in the present case made import of machines declared as Electronic Sensor Paver. Vogele - Model 1800-2 with AB 600-2

TV Screed for laying bituminous pavement of working width 3 meters infinitely variable width 3 meters to 6 meters maximum width (TV/TP1) 9 meters, and claimed the benefit of Notification No. 21 /2002-Cus. dated 1.3.2002 at Sr.No.230

(Sr.No.2 of List 18).

4. The contention of the learned counsel appearing on behalf of the respondents is that in the present case the machines in question can lay pavement to the minimum width of size 3 meters and more than 7 meters. The respondents relied upon the product literature of the machine in question. According to the respondents, the machine in question by addition of bolt-on extensions can lay width upto 9 meters. The Notification covers electronic paver finisher (with sensor device) for laying bituminous pavement 71 meter size and above. Thus it is satisfying the criteria specified under the Notification 21/2002-Cus. The contention is that it is settled principle of interpretation that an Exemption Notification has to be strictly construed and that too on the basis of the language used therein. Addition or deletion of words in an Exemption Notification is permissible. The only requirement under the Notification is that the machine should be

capable of laying pavement width of 7 meters and above and the machines in question are capable of laying pavement width of 7 meters and above hence the benefit of the Notification is available to the machines in question.

5. The Revenue relied upon the product literature and submitted that the machine in question is capable of laying bituminous pavement ranging from 3 meters to 6 meters. It is only with the addition of bolt-on extensions i.e. with the accessories the machine is capable of laying bituminous pavement of 7 meters and above. The Notification provides benefit to the machine which is capable of laying bituminous pavement of 7 meters size and above. The Revenue also submitted that the additional bolt-on extension are accessories as per the purchase order placed by the importers and as well as the packing list. The Revenue relied upon the decision of the Hon'ble Supreme Court in the case of Novopan India Ltd. vs. CCE, Hyderabad reported in 1994 (73) ELT 769 (SC), to submit that a Notification has to be strictly construed and in case of any doubt, the benefit should go to the State.
6. The contention of the Revenue is that as the onus is on the importer to show that they fulfil the criteria laid down by the Notification, which is specific that the machine is capable of laying bituminous pavement of 7 meters size and above meaning thereby that machine itself is capable of laying bituminous pavement of 7 meters size and above and not with the accessories. The Revenue submitted that accessory is not essential part of the machine. The machine is complete without the accessories. In view of this, the contention is that the machines in question are not entitled for the benefit of the Notification.
7. We find that the issue involved in this case is whether the respondents in the present case are entitled for the benefit of Notification No.21/2002-Cus. dated 1.3.2002 in respect of the machines imported by the respondents. For ready reference, the relevant portion of the Notification is reproduced below:-

S. No.	Chapter Heading No.	Description of goods	Basic Duty Customss	Additional Duty of Customs	Condition No.
230	84 or any other Chapter	Goods specified in List 18 required for construction of roads	Nil	Nil	40

LIST 18

- 1) Hot mix plant batch type with electronic controls and bag type filter arrangements more than 120 T/hour capacity
- (2) Electronic paver finisher (with sensor device) for laying bituminous pavement 7 m size and above
- (3) Slip form/fixed form paverfinisher for laying concrete pavement
- (15) Hydraulically operated rough terrain self propelled 100 tons crane with telescopic boom
- 16
- 17 Mobile concrete pump placer of 90/120 cu m/hr capacity
.....
- 20 Hydraulic gantry crane of 100 tonnes capacity for launching truss

Conditions

- a) the goods are imported by-
 - (i) the Ministry of Surface Transport, or
 - (ii) a person who has been awarded a contract for the construction of roads in India by or on behalf of the Ministry of Surface Transport, by the National Highway Authority of India, by the Public Works Department of a State Government or by a road construction corporation under the control of the Government of a State or Union Territory; or
 - (iii) a person who has been named as a sub-contractor in the contract referred to in (ii) above for the construction of roads in India by or on behalf of the Ministry of Surface Transport, by the National Highway Authority of India, by Public Works Department of a State Government or by a road construction corporation under the control of the Government of a State or Union Territory;
- (b)
- (c)
8. Now, the issue before us is whether the machines in question fulfil the criteria laid down under the Notification. The only contention of the present respondents is that with the addition of bolt-on extensions, the machine in

question is capable of laying bituminous pavement of 7 meters size and above. From the purchase order and from the packing list, we find that the accessories i.e. bolt-on extensions were separately ordered. In a situation, when bolt-on extensions are.... not imported, the relevant question would then be whether the machines still qualify for exemption under Notification 21/2002. Certainly, the benefit of the Notification is not available to such machine. In other instance, when the machine has been imported with accessories, whether the benefit of the Notification is available. The mere import of the accessories with the machine cannot change the basic character of the machine. As per the Webster New International Dictionary, accessory is 'an object or device not essential in itself but adding to the beauty, convenience, or effectiveness of something else. The machine is complete in itself without the accessories.

9. A Notification is to be interpreted strictly as held by the Hon'ble Supreme Court in the case of Novopan India Ltd. (supra). The Hon'ble Supreme Court held as under:-

"18. We are, however, of the opinion that on principle, the decision of this Court in Mangalore Chemicals - and in Union of India v. Wood Papers referred to therein - represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to State. This is for the reason explained in Mangalore Chemicals and other decision, viz, each such exception /exemption increases the tax burden on other members of the community correspondingly. Once of course the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave [1978 (2) E.L.T. (J 350) (SC) = 1962 (2) S.C.R. 253] that such a Notification has to be interpreted in the light of the words employed by it and not on any other basis. This was