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2018 (359) E.L.T. 732 (Tri. - Mumbai)

IN THE CESTAT, WEST ZONAL BENCH, MUMBAI

[COURT NO. I]

S/Shri D.N. Panda, Member (J) and C.J. Mathew, Member (T)

KODAK INDIA PVT. LTD.

Versus

COMMISSIONER OF CUSTOMS (I), MUMBAI*Final Order No. A/87739/2017-WZB/CB, dated 24-5-2017 in Appeal No. C/772/2006-Mum*

Project Import - Transfer of capital goods imported for manufacture in Pondicherry to Goa Project - Revenue alleging violation of Project Import Licence - Assessee urging goods imported in terms of previous licence, used in Goa Project under permission of Industry Ministry in terms of letter dated 7-2-1995 - HELD : Notification No. 230/86, dated 3-4-1986 relating to Project Import Regulation not exhibiting any embargo or barrier restricting transfer of capital goods for shifting of project from one place to other - Enquiry from Goa Commissionerate regarding arrival and installation of goods covered by aforesaid bill of entry needs to be conducted and if satisfied, same not to constitute violation of Project Import - Invocation of Section 111(o) of Customs Act, 1962 to be unwarranted when assessee's intention not appearing to be mala fide - Matter remanded to adjudicating authority to conduct thorough enquiry and arrived at proper conclusion - Section 111(o) of Customs Act, 1962. [paras 6, 7, 8, 9, 10, 11]

Matter remanded**CASE CITED**Jacsons Thevara v. Collector — [1992 \(61\) E.L.T. 343](#) (S.C.) — Referred..... [Paras 3, 10]

REPRESENTED BY : S/Shri S.N. Kantawala with Brijesh A., Advocates, for the Appellant.
Shri M.K. Mall, Assistant Commissioner (AR), for the Respondent.

[Order per: D.N. Panda, Member (J)]. - Import of certain goods was made by appellant for manufacture of photographic colour films in Pondicherry under the **Project Import** Scheme. The goods so imported vide Bill of Entry No. B-0002703, dated 9-6-1993 were not utilised but lying idle in Pondicherry. Against appellant's application, Ministry of Industry, Government of India, vide letter F.No. 15(950)/94-CGF, dated 7-2-1995 accorded permission for setting up a similar project in Goa permitting change of location from Pondicherry to Goa.

2. Revenue's allegation is that the condition of the **Project Import** licence could not be fulfilled by appellant for which the goods were liable to be confiscated under Section 111(o) of the Customs Act, 1962 and consequences of law in that regard shall apply.

3. Appellant submits that in the year 1992, it obtained licence for manufacture of photographic colour films in Pondicherry and duty free **project imports** was granted in respect of capital goods for set up of the said project thereat. Accordingly goods were imported in terms of bill of entry No. B-0002703, dated 9-6-1993. But after clearance of the goods, when the Pondicherry project was not possible to be started, appellant shifted the capital goods to Goa and such shifting was done in terms of the **Project Import** Certificate issued by the Ministry of Industry in terms of letter dated 7-2-1995. In that letter, in para 2(iii) the earlier certificate issued for Pondicherry project on 10-4-1992 was referred and the goods imported in terms of previous licence was permitted to be used in the Goa project. The Industry Ministry in para 3 of the above letter also permitted that the certificate covers the goods of earlier import. Learned Commissioner did not consider these aspects but arrived at a conclusion that the **project import** was for Pondicherry and was registered under Notification No. 132/85-Cus., dated 19-4-1985 but Goa project was subjected to Notification No. 90/94-Cus., dated 1-3-1994. Not only he confirmed the duty payable but also imposed redemption fine of Rs. 2 lakhs. Appellant relies on the judgment of Apex Court in the case of *Jacsons Thevara v. Collector of Customs & Central Excise* - [1992 \(61\) E.L.T. 343](#) (SC). To support its contention.

4. Revenue supports adjudication.

5. Heard both sides and perused the records.

6. In para 1 of the adjudication order, learned adjudicating authority has mentioned that duty free **project import** of capital goods was allowed on 10-4-1992 by letter of the DGTD relating to Pondicherry project. On that basis, appellant says that such goods were imported by the aforesaid bill of entry. Subsequently when it intended to shift the capital goods so imported to Goa, it took permission of the Industry Ministry in terms of letter dated 7-2-1995. The said letter mentions about the earlier permission granted for Pondicherry project to be governed by the fresh **Project Import** licence for import of capital goods and permission was also granted to import additional items for Goa project. That certificate also covered the earlier imports arrived to be governed by such revised **Project Import** licence.

7. Record does not reveal as to whether while issuing the show cause notice dated 11-8-2004, any enquiry was conducted by the Mumbai Commissionerate from the Goa Commissionerate to ascertain whether the capital goods imported for Pondicherry project and lying thereat were transported to Goa and installed thereat. Had the enquiry been made, the authority would have been satisfied as to the useful purpose of the **Project Import** licence. That not being done, that led the adjudicating authority to deal the appellant in dark who proceeded and made levy of additional duty of customs of Rs. 19,00,285/- followed by redemption fine of Rs. 2 lakhs.

8. When Notification No. 230/86, dated 3-4-1986 relating to the **Project Import** Regulation is read, that does not exhibit any embargo or barrier restricting **transfer** of capital goods for shifting of project from one place to other. Therefore learned Commissioner shall conduct enquiry from the Goa Commissionerate as to whether the goods covered by the aforesaid bill of entry have arrived in Goa and installed thereat. If he is satisfied, that may not constitute violation of project of **Project Import**. In such circumstances, invocation of Section 111(o) of the Customs Act, 1962 is unwarranted when the intention of the appellant does not appear to be *mala fide*.

9. With the above direction, the matter is remanded to learned adjudicating authority to conduct a thorough enquiry and arrived at a proper conclusion affording reasonable opportunity of hearing to the appellant.

10. At this stage, Revenue says that the appellant should not be given the benefit of the judgment of the Apex Court in the case of *Jacsons Thevara - 1992 (61) E.L.T. 343* (SC). We do agree that if the appellant has not installed the machinery brought through the aforesaid bill of entry, that shall be a case of violation of the **Project Import** licence. Therefore factual enquiry is needed to reach to a proper conclusion. We do agree with Revenue that post-import conditions to be fulfilled in terms of Section 111(o). Therefore after the aforesaid enquiry is conducted, appropriate order may be passed.

11. In the result, appeal is remanded to learned adjudicating authority in above terms.

(Dictated and pronounced in the open Court)