

Sanghi Medical Centre Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-27-1997

Reported in : (1997)(71)LC836Tri(Delhi)

Judge : S T K., A Wadhwa

Appellant : Sanghi Medical Centre

Respondent : Cc

Judgement :

1. The appellant imported one Ultra Sound Machine from U.S.A. in January, 1988. In the Bill of Entry filed for its clearance, the assessable value was declared as Rs. 4,10,464 corresponding to invoice price of US \$ 31,852. A sum of US\$ 7463 was not included by them in the assessable value originally but it appears the customs authorities directed them to include the same. This amount was then entered in the box captioned Loading/Local Agency Commission. The payment of duty was made on two days, 20.1.1988 and 27.1.1988, the latter payment being for the duty referable to the sum of US \$ 7463 which was made under protest. The appellant filed a refund claim on the duty paid on such added value on the ground that such added value was Technical Handling Charges paid to the local agent of the suppliers for installation, servicing and training which should not have been included in the assessable value. The refund claim was for Rs. 38,469. The appellants also made an additional claim stating that as per the revised agreement they had to pay only a sum of US \$ 6866 towards installation, servicing, training and technical handling charges to the Indian Agent and not US \$ 7463 as

originally agreed. On this count, refund of Rs. 3077 was claimed as due to them. The Assistant Collector rejected the claim holding that installation charges are part of assessable value and that the request for amendment of Bill of Entry due to revision in agreement for installation charges from US \$ 7463 to US \$ 6866 cannot be entertained in terms of provisions of Section 149 of Customs Act, 1962. The order was unsuccessfully challenged before the Collector (Appeals) who held that for the claim that installation charges had been wrongly included in the column "Loading/Local Agency Commission" in the Bill of Entry there was no evidence whatsoever. After observing that the specific amount of local agency commission had not been mentioned, the Collector (Appeals) went on to add that the appellants were claiming the entire amount of US \$ 7463 shown in the Bill of Entry as Local Agency Commission. He stated that the appellants had not submitted any documentary evidence such as agreement with the supplier/local agent to substantiate their case. Even while stating that the appellants had not substantiated their claim that the said charges were only local agent's commission, he observed that the claim made at that stage would amount clearly to amendment of the Bill of Entry in a substantive manner affecting their own declaration and the assessable value which was not permissible under Section 149 of Customs Act, 1962. On such a reasoning the Collector (Appeals) rejected the appeal. Hence the present appeal.

2. Heard both sides and perused the record. We find that the impugned order in appeal has been assailed, inter alia, on the ground that the Collector (Appeals) had erred in holding that there was no evidence to substantiate the appellant's claim that installation charges were wrongly shown as charges for loading/unloading Agency Commission charges. The question that the amount in question was for loading/unloading and agency commission was not an issue before either the Assistant Collector or before the Collector(Appeals) and that the Collector had gone beyond the order of the Assistant Collector and travelled beyond the issue involved in the case. It has been contended that the commission to the local agent was for the foreign supplier to pay and that it was not in the knowledge of the appellants and it was neither possible nor necessary for them to declare the amount of commission paid to the local agents. The case of the appellants before the lower authorities, reiterated in the present appeal also, is

that the amount in question was paid by them in India to the local agents of the suppliers for the purpose of installation, personnel training and servicing of the machinery. These are post clearance expenses and the supply and sale of the machineries was not conditional upon the appellants paying the amount in question to the local agent. It was an optional matter.

3. The submission of both the sides have been considered. The contention raised in support of the appeal that while the case of the appellants was that the disputed amount was what was paid to the local agents for installation of the machine its servicing and the training of the employees which was not includible in the assessable value of the imported machine, the impugned order-in-appeal has been passed treating the said amount as local agency commission. The Assistant Collector had, however, held that installation charges are part of assessable value. The orders of the two lower authorities are thus not on the same lines though both the orders were against the appellants.

However, on the alternative and limited claim of the appellants of limiting the disputed value to US \$ 6866 instead of US \$ 7463, both the lower authorities held that the claim was not permissible in view of Section 149 of the Customs Act. We find that in the copy of the Bill of Entry produced, while all the entries made by the appellants or their Custom House Agents on their behalf have been typed, the figure US \$ 7463 has been written by hand in the box having the heading Loading/Local Agency Commission. Obviously this entry had not been made by the appellants suo motu as they had initially not declared this amount and they had also paid the duty on the said inserted value under protest. In the copy of Invoice dated 14.12.1987 issued by the suppliers, General Electric for the subject goods, the value shown is only US \$ 31,852. There is no reference to the other amount of US \$ 7463 which is under dispute. The latter amount is, however, mentioned in the copy of Proforma invoice dated 27.2.1987 issued by IGE (India) Ltd. who are referred to therein as affiliated to General Electric Company, U.S.A. The amount is described in the said Proforma Invoice as being in addition to the invoice amount of US \$ 31,852 to be paid in equivalent Indian Rupees to IGE (India) Ltd. towards Technical and Handling charges. The nature of such technical and Handling charges has not been indicated in the Proforma Invoice. The copy of

invoice dated 14.12.1987 issued by the U.S. suppliers, available in the appeal papers, however, does refer to the amount payable to I.G.E. (India) Limited. Only in the copy of the affidavit filed by the Accountant of the appellant before the Collector (Appeals) has it been stated that the Department insisted on the payment of customs duty on installation charges and that they had the option to buy the machine without installation charges and the installation was not compulsory and essential part of the sale price of the machine. A copy of the completion of installation report has been filed which is dated 8.2.1988 showing the date of start of installation as 1.2.1988 and completion date as 8.2.1988.

4. The Assistant Collector had, as pointed out above, rejected the refund claim observing that installation charges are includible. The order is cryptic and there is no indication whether the claim that the amount represented installation charges was correct and that the finding that installation charges are includible in the assessable value had been reached after being satisfied that the amount in fact represented installation charges only and was not local agency commission. The question whether it was the appellant who had declared it in the Bill of Entry as local agency commission or it was the departmental officer who had made such an entry while completing the assessment in the Bill of Entry. The documents on the basis of which the said entry has been made do not appear to have been filed in the appeal papers. The invoice of the foreign supplier is dated 14.12.1987 while the proforma invoice issued by the local agents is dated as early as 27.2.1987. There is no invoice of the suppliers mentioning the amount of US \$ 7463 which figures in the proforma invoice issued by the local agent described as Technical Handling Charges. There is also no document to substantiate the claim that the amount of US \$ 7463.00 was subsequently reduced to US \$ 6866. The claim that duty should be restricted to that leviable on the reduced value would appear to be an alternative claim, without prejudice to the main claim that no duty would, in fact, be leviable on the amount of such charges locally paid.

As stated above, this issue has been dealt with from different angles by the two lower authorities neither of which is correct. The question of includibility of installation charges of imported equipment had come up for decision before the Tribunal in *Scan Electronics v. Collector of Customs, Bombay*, held therein that

certain post importation charges like travelling expenses and daily allowance for supplier's personnel was excludible from the assessable value of the machine while certain other charges which were compulsory and essential part of the sale price of the machine was includible in the assessable value. It was held that if the appellants could show that it was open to a customer to purchase the machine without the service at a lower price the said lower price should be taken as the basis of assessment. If there was no option available to the customer and even if he did not want the service he still had to pay the full composite price inclusive of the service element then the composite price should form the basis of assessment.

In a recently reported judgment in *Collector of Customs (Prev.) Ahmedabad v. Essar Gujarat Ltd.* that process licence fees and certain technical service fees payable under the contract entered into by Essar with the suppliers were includible in the assessable value of the second hand sponge iron making plant, held that the payment for training cannot be added to the value of the plant. The present matter requires to be looked into afresh following the ratio of the judgment as also the Tribunal decision in the *Scan Electronics* case.

5. The rejection of the refund claim due to reduction of the charges paid to the local agents has been wrongly rejected invoking the provisions of Section 149 of Customs Act. This section lays down that the proper officer may, in his discretion, authorise any document presented in the Custom House to be amended. There is a provision in the section that no amendment of a Bill of Entry shall be authorised to be amended after the imported goods have been cleared for home consumption except on the basis of documentary evidence which was in existence at the time the goods were cleared. This would not apply to a refund claim. By the same token, it will not affect a demand for duty.

Such refunds or demand of duty are governed by the appropriate provisions in the Act. These do not come in the category of amendment of Bills of Entry and such cases have to be dealt with on merits and the factual position.

6. We therefore set aside the impugned orders and allow the appeal by remand to the Assistant Commissioner for de novo decision in the light of our above

observations.

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