Krishna and Co. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-05-1997

Reported in : (1997)(73)LC472Tri(Delhi)

Judge : S Kang, S T K.

Appellant : Krishna and Co.

Respondent : Cc

Advocate for Pet/Ap. : Shri. M.A. Rangaswamy

Judgement :

1. Appellants imported a consignment of 5000 Filters from United Kingdom. The goods were described in the invoice as Automotive Spare Parts Filters. Unit price was shown as 0.19. The value of the consignment declared in the Bill of Entry as Rs. 21,796/- was not accepted by the Custom House and on the basis of the price charged for a consignment of 3800 Filter elements imported at Bombay. The value of the consignment was enhanced to Rs. 66,533/- applying the rate of 0.58 per filter. After hearing the appellant, the Deputy Collector of Customs, passed his order dated 4.10.1986 fixing the assessable value as Rs. 66,533/-. He confiscated the goods on the ground of under valuation but permitted their redemption subject to payment of Rs. 33,250/-. The Deputy Collector issued a further order dated 29.11.1986 terming it as an addendum to the earlier one dated 4.10.1986 referred to above in response to the request of the appellants for a speaking order in the matter of valuation: The order was challenged by the appellants before the

Collector (Appeals) who, vide his order-in-appeal dated 5.7.1988 'vacated' it on the ground that it was passed "without giving them full opportunity to defend the case". The case was then decided by the Additional Collector of Customs vide Adjudication Order No. 511/92 dated 18.8.1992 after hearing the appellants and taking note of their submissions in justification of the declared invoice value. In this order, the same unit price of 0.58 was adopted in lieu of the declared 0.19 per piece as had been done in the earlier order of the Deputy Collector. Duty was directed to be charged on the enhanced value of Rs. 66,533/- as had been ordered earlier. However, no redemption fine was imposed on the ground that the goods had already been released. This order was upheld by the Collector (Appeals) who rejected the appeal filed before him. Thereby the present appeal.

2. Shri M.A. Rangaswamy, learned Counsel for the appellants contended that the rejection of the invoice price was not correct. The other import with which their import was compared was made at a different time, more than six months earlier. That other import was of a standard make, Lucas. The goods were not the same as they had imported was Filters which were automotive spare parts while the compared imports were spare parts of Diesel engines fitted on trawlers. He relied upon the following decisions in support of the plea for acceptance of their invoice price for assessment and licence.

1. 1978 ELT J260 (Privy Council) : 1983 ECR 1575D (PC) : ECR C 1 PC : ECRC Cus 1 PC Vacuum Oil Company v. Secretary of State.

3. The arguments were resisted by Shri M. Ali, learned Departmental Representative who justified the rejection of the invoice price by the authorities below. The subject goods and the compared goods were the same, being filter which had the same Part No. 7111-296. This specific part number would show that both the goods were the same. As had been observed in the impugned order the quantity covered in the compared import was much more, namely, 38000 pieces whereas the quantity imported by the appellants was only 5000. The lower price charged for a smaller quantity was obviously a case of under valuation. He pleaded that the appeal be dismissed.

4. We have considered the arguments advanced. The part number for the goods in question and for the compared imports being identical, namely, 7111/ 296 and both imports being from the same country U.K., we reject the plea in support of the appeal that the goods were not the same but different. The case was originally adjudicated by the Deputy Collector when the appellants/importer while waiving show cause notice wanted personal hearing and personal hearing was granted. When confronted with the evidence regarding the import of same article with the same part number at a higher price of 0.59 it was submitted by them that the goods were imported at the price of 0.19 on the basis of local market value in India. They requested that the goods may be released assessing duty on the higher value. They stated that this should be their first and last violation of Customs Law and requested for a lenient view. The aspect though it was not specifically agitated before them by taking note of the fact that the part number shown for the goods in the two invoices were identical, namely, 7111-296. The part number being specific for a particular article, the different descriptions in the invoices is not material. The admission before the Deputy Collector at the time of original adjudication was category and unambiguous. The admission was that goods had been undervalued and there was a plea for lenient view. It was started by them that it would be their first and last violation of Customs law. The explanation given at that time was that the unit price of 0.19 was on the basis of local market value in India. This, is difficult to follow as the local market value in India will, by itself, have no bearing on the price charged by an overseas supplier. This implausible explanation coupled with the admission of misdeclaration was a clear pointer to the undervaluation of the goods.

The setting aside of this order by the Collector (Appeals) was not on the ground that this order was not correct or that the appellant had not taken the plea as above but on the ground that it was passed without giving them full opportunity to defend the case. Such further opportunity had actually been given by way of the de novo adjudication.

Nothing stated by them in such de novo proceedings or in the appeal before Collector (Appeals) tends to minimise the effect of the admission made in the original proceedings though the pleas taken in such de novo proceedings had to be considered on merits. They were so considered and the impugned decision taken. The appeal insofar as it challenges the enhancement of value on the basis of the compared import merits rejection and we order accordingly.

5. As regards confiscation and the redemption fine fixed in lieu of confiscation under the order of the Deputy Collector, that was vacated by the first Order-in-Appeal. In the de novo adjudication order, the Additional Collector held that as the goods had already been released she was not imposing any redemption fine. In view of this position, the amount of Rs. 33,250/- adjudged by the Deputy Collector under his order dated 4.10.1986 which was vacated by the Collector (Appeals) would become refundable to them. Though the said amount was not described as fine in lieu of confiscation in that order, it was fine in lieu of confiscation. Appellants would be entitled to get back the said amount of redemption fine. The amount became due to them when the de novo order passed on remand did not provide for confiscation of the goods or for any fine in lieu of confiscation. We are making this observation as this is a plea in the appeal. It is not, however, an issue for decision in the appeal and the refund of the redemption fine paid by them pursuant to the original adjudication order is not a consequential relief arising from this decision on their appeal.