

S.K. Electronics Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-22-1997

Reported in : (1998)(98)ELT668Tri(Mum.)bai

Appellant : S.K. Electronics

Respondent : Commissioner of Customs

Judgement :

1. Appellant imported a consignment of parts of car, cigarette lighters and declared its cif value at Rs. 9555/- for 4800 pieces. The Department was of the view that the consignment was under valued. It proposed that the value of the goods should be Rs. 50,400/-. This value was determined on the basis of the market price of Rs. 80/- per lighter which the Department found to be the price of lighters of comparable quantity and quality and by applying Rule 7 of the Valuation Rules. The importer waived issue of written notice. It contended before the Additional Collector that it had imported parts which were insufficient to compare a complete lighter. Additional Collector did not accept this contention and increased the value to Rs. 50,400/-. Since the licence produced by the importer was not sufficient to cover the value of the goods so increased, he ordered confiscation of the goods with an option to redeem on payment of fine. He also imposed a penalty. Hence this appeal.

2. The appellant contends that there is nothing to show that why transaction value should not be accepted; that the bill for retail sale relied upon by the Department does not indicate the make or model of the lighter. The goods in that case do not

appear to be lighters, they seem to be "light". Further bill is for a complete product whereas the imported consignment was only parts. Hence comparison made by the Department between the complete product and parts is not substantiated.

3. The Departmental Representative points out that in the value of Rs. 9555/- declared, freight alone came to Rs. 8205/-. There has been obvious undervaluation of the goods, claimed to value 20 paise, sufficient adjustment has been made by applying Rule 7 of the Valuation Rules.

4. In the absence of any evidence of contemporaneous import or any other factors that rendered the invoice unacceptable, it is not possible to say that the transaction value was not the correct value acceptable under Section 14. It would have been a different matter if the Department has not been able to show by reference to contemporaneous imports, or other evidence and that the goods were undervalued. There is however no such evidence. The order of the Additional Collector does not indicate why the transaction value could not be accepted. Even by applying the Valuation Rules the transaction value has to be accepted, except in case, provided in Rule 4 of the Valuation Rules. For the value not to be accepted it must be shown that the conditions specified in the proviso to sub-rule (2) of Rule 4 exists. This has not been done.

5. Apart from this the determination of the value on the basis of retail invoice of Shetty Auto Enterprise is not supported by rules. The invoice is for one item of commodity which is illegibly described. It could be "lighter" or "light". Even assuming it to be a lighter there is nothing to show that it was a car lighter. The fact that the invoice is issued by a dealer in auto parts is at most an indication that it is. Further Rule 7 would come into the picture if Rules 4,5 and 6 cannot apply. There is nothing to show why the Department could not apply these rules. In addition, if Rule 7 is to apply the basis of the value should the value of identical or similar goods. Obviously a cigarette lighter and parts of such lighter could not be considered to be identical or similar to each other. The appellant's contention that a complete lighter could not be assembled out of the parts imported by it has not been rebutted. If sub-rule (3)(a) of Rule 7 is to apply, the value must be based on the unit price at which the imported goods after further processing are sold in the

greatest aggregate quantity to persons who are not related to the seller in India. In such determination, due allowance has to be made for value added by processing and the deductions on account of commission, usual cost of transport, duty etc. The order of the Additional Collector says that due allowance has been made for such factors but does not indicate his calculation law that has been done. There is nothing to indicate the specific allowance made on account of duties, transport cost of manufacture, cost of other parts required to make a complete lighter etc. Therefore, the valuation arrived at by the Additional Collector is arbitrary and not based on a criteria specified in Rule 7 of Valuation Rules. The fact that the value determined by the importer (does appear very low) cannot by itself justify arbitrary determination of the assessable value. The Valuation Rules itself provided for enough provision to deal with such contingencies. The order of the Additional Collector therefore cannot be upheld.

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