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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-05-1997

Reported in : (1998)(101)ELT450TriDel

Appellant : Comet Electronics P. Ltd.

Respondent : Collector of Customs

Judgement :
1. This appeal is directed against the order dated 2-4-1991 of Additional Collector of Customs. The Appellants imported various models of car speakers. Based on quotation obtained from Hong Kong. Additional Collector held that goods are under valued and for excess value there is no valid licence. He also denied the benefit of Notification No.91/89, dated 1-3-1989 on the ground that the goods are not cone type speakers.

2. Arguing on behalf of the Appellants the ld. Counsel submits that they waived the show cause notice as they were informed that the proposed enhanced price are based on invoices for contemporary imports.

It is only during the personal hearing that they came to know that there was no invoice. Their goods in fact were from Singapore and the alleged quotations were obtained from Hong Kong. Additional Collector also took into account the retail price in Hong Kong which is not relevant for determining the value under Section 14 of Customs Act. In any case there was no quotation for model TSF.1687 and the price based on quotations in regard to other models could not be adopted for this model. For establishing under valuation contemporaneous imports of similar goods are to be considered and mere quotations not supported by any evidence of contemporaneous imports cannot form the basis for determination of the assessable value. He placed reliance on the case of Ghanshyam Chagia v. C.C. - 1989 (44) E.L.T. 202 (Cal.), Tridento Telerews v. C.C. reported in 1990 (45) E.L.T. 24 (Cal.), 1990 (45) E.L.T. 644 (Tribunal), .1990 (45) E.L.T. 24 (Cal.). They were at no time informed about the quotations from Hong Kong nor were any invoices supplied to them and this was clear violation of the principles of natural justice. In regard to the benefit of Notification he submits that no evidence at all has been led by the Customs Authorities in support of the findings that speakers are not cone type. The goods imported are car speaker (loud speaker designed to reproduce high pictch sound in a high fidility or auto cycle system) which are both cone type.

3. Arguing on behalf of the Revenue, the ld. D.R. submits that goods were highly under valued and the enhancement was justified because of the quotations received from Hong Kong. Mere fact that quotations were from Hong Kong and not from Singapore is not relevant since the goods were from Japan.

4. We have heard both sides. It was contended before us that they waived the show cause notice when they were informed the higher prices were based on the invoice for contemporaneous imports. He drew our attention to the letter dated 15-2-1991 placed at page 21 of the paper book. The Ld. Counsel submitted that in this letter to the Assistant Collector they made it clear that they have been given the impression that customs wanted to load the value as per contemporaneous invoices available with the department. Since the goods were lying at Docks since November, 1990 and considerable demurrage had been incurred they were prepared to accept the loading in value. It will be clear that show cause notice was waived only under the impression that the invoices indicating contemporaneous import at high prices were available. Had they been informed about the quotations they would have been able to produce the evidence in support of their transaction value as indicated in the invoices. In view of this, we are of the view that there has been a clear miscarriage of justice involving the violation of principle of natural justice.

5. In regard to exemption under Notification No. 91 /89, dated 1-3-1989 Additional Collector has recorded that: "...The benefit of Notification No. 91/89, dated 1-3-1989 cannot be extended to the goods in question because it is available to the speakers which are cone type. The goods presently imported are not cone type but are complete assembly of speaker." The B/E. which is assessed and placed at page 16 of the paper books clearly indicates car speakers cone type. The Counsel drew our attention to the relevant definitions given in the Encycloypedia of Electronics. The ld. Counsel submitted that the speakers are cone type speakers. The relevant portion of the extract is given below : A speaker, also known as a loudspeaker, is a form of electroacoustic transducer. The speaker converts alternating electric currents into sound waves having the same frequency characteristics and the same waveforms, within the range of human hearing (approximtely 16 Hz to 20 kHz) There are several types of speakers intended for different applications. The woofer is designed to operate at the lower audio frequencies. The midrange speaker is designed to be used at frequencies near the middle of the human hearing range. The tweeter is intended for reproduction of sound at the upper end of the range: Some tweeters will operate at ultrasonic frequencies (see MID RANGE, TWEETER, WOOFER). Many high fidelity speaker systems consist of one of each of these three transducer types. Communications speakers usually consist of a simple midrange speaker.

A cone is a diaphragm responsible for the radiation of sound from a loudspeaker. The cone gets its name from the fact that it is conical in shape, as shown in the illustration. Speaker cones are usually made from thin cardboard material. The back-and-forth vibration of the cone, caused by the action of the speaker coil in the magnetic field, produces sound waves.

The speaker cone must be properly designed for optimum sound reproduction. In communication systems, a high frequency cone response (about 3000 Hz) is undesirable. In a high fidelity sound system, the response must extend to the limit of the human hearing range, or about 16,000 to 20,000 Hz. Special speaker combinations are necessary to achieve this frequency range. See also Speaker, Tweeter, Woofer." Tweeters are used in the high fidelity system in conjuction with midrange speakers and woofers to obtain a flat audio response.

6. The description of cone type speakers given in the Bill of Entry has not been challenged at the time of assessment. We, therefore, find nothing to reject the plea that speakers were in fact cone speaker.

Apart from this neither in the order of the Additional Collector nor in the letter dated 15-2-1991 placed at page 21 of the paper book in which the appellants waived right to show cause notice is there any indication that they were put on notice in regard to denial of this exemption. Letter dated 15-2-1991 indicates that the waiver of the show cause notice was only on the question of vehicle. The appellants were never put on notice in regard to non eligibility of exemption. On this account alone this part of the order is liable to be set aside. Ordered accordingly. In the result we pass the following order: 1. The matter relating to valuation is remanded to Adjudicating Authority for de novo decision after disclosing evidence to the appellants and affording them a reasonable chance of being heard.

2. The part of the order which denies exemption under Notification No. 91/89, dated 1-3-1989 is set aside.