

**Viva Electronics Vs. Cc**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Dec-23-1997

**Reported in :** (1998)(75)LC124Tri(Delhi)

**Judge :** U Bhat, S T K.

**Appellant :** Viva Electronics

**Respondent :** Cc

**Judgement :**

1. This appeal is directed against the order-in-appeal No. 9/C/DLH/96 dated 15.1.1996 passed by the Commissioner of Customs (Appeals), New Delhi, confirming the order-in-original No. 1339/95 dated 15.11.1995 passed by the Assistant Commissioner of Customs, New Delhi.

2. Appellant imported 200 pieces of cordless telephones of Hong Kong origin from a Hong Kong supplier and produced Bill of Entry dated 6.9.1995 and other import papers and declared value as US \$ 18.75 per piece C&F. It is stated that the Custom House initially valued the goods at US \$ 35 per piece. On 11.9.1995 appellant wrote to the Assistant Commissioner stating that he was not prepared to accept this value and proposing to pay duty under protest. Thereafter, the value was reduced to US \$ 32.40 per piece CIF. A formal order was also passed by the Assistant Commissioner which was confirmed by the Commissioner (Appeals).

3. The Assistant Commissioner did not issue any show cause notice to the appellant. Shri M. Ali, JDR states that the appellant did not insist on a show cause notice. It is not for the importer to insist on show cause notice. It is for the statutory authority to issue a show cause notice or at least inform the importer the grounds on which the declared value was found unacceptable and the basis on which valuation was to be made. The Assistant Commissioner relied on a quotation called for from the manufacturer in respect of identical telephones. The manufacturer quoted price at US \$ 32 FOB per piece. The impugned orders relied on this quotation.

4. The orders are infirm for more than one reason. Show cause notice was not given. Appellant was not informed that it was proposed to rely on this quotation. According to the appellant, a copy of the manufacturer's invoice to the supplier was made available to the Assistant Commissioner, but that was ignored. The Assistant Commissioner indicated that no such document was produced before him.

The letter dated 11.9.1995 of the appellant refers to this document.

The Commissioner (Appeals) felt that the particular sentence must have been inserted subsequently. We find no ground to uphold this conclusion of the Commissioner (Appeals). Therefore, it follows that though manufacturer's invoice was produced before the Assistant Commissioner, it was not considered. The Commissioner (Appeals) himself could have considered the manufacturer's invoice which was placed before him. He also failed to do so. Learned Counsel for the appellant made certain submissions regarding the quotation. However, we do not propose to consider these submissions and the rebuttal made by the DR, since we are of opinion that the matter deserves remand. A copy of the quotation was handed over to the appellant along with the adjudication order passed by the Assistant Commissioner. If this be the only document on which the Department proposes to rely, the matter could be proceeded with notice. If on remand, the Department proposes to rely on any other document, a copy of the same may be made available to the appellant before personal hearing. The adjudicating authority will also consider the effect of the copy of the manufacturer's invoice

produced by the appellant.

5. For the reasons indicated above, we set aside the impugned orders and remand the case to the jurisdictional adjudicating authority for decision afresh in accordance with the observations in this order and after granting appellant opportunity of personal hearing.

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