

Sudha Pharma Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-10-1998

Reported in : (1998)(76)LC329Tri(Delhi)

Judge : U Bhat, S T K.

Appellant : Sudha Pharma

Respondent : Cc

Judgement :

1. The common appellant imported two consignments of Khas Khas of Pakistan origin, the total quantity being 58.8 metric tonnes and presented two Bills of Entry dated 19.11.1990 declaring the value as Rs. 3.60 per kg. and sought clearance. Show cause notices were issued proposing to enhance the value to Rs. 12.00 per kg. Though the appellant resisted the notices, the proposal therein was confirmed and assessable value was determined on the basis of the proposed price.

These orders are now challenged.

2. The Additional Collector relied on a computer print-out relating to the clearance of Khas Khas of Afghanistan origin imported at Bombay Port on 16.1.1991 at Rs. 13.00 per kg. There were three clearances of Khas Khas of Pakistan origin on 16.1.1991 at the Madras Port, the quantum being 14 metric tonnes, 14 metric tonnes and 43 metric tonnes respectively. The assessable value was Rs. 12.20, Rs. 12.00 and Rs. 12.90 per kg. respectively. Obviously, the value assessed at the

Bombay Port cannot be taken into consideration, since the goods were of non-Pakistani origin. The quantities of the three consignments dealt with at Madras Port were far below the quantity imported by the appellant. Therefore, there should have been adjustment for price before adopting the same.

3. Appellant has produced Bills of Entry regarding Khas Khas at various Ports during 1983 to 1989 at prices ranging between Rs. 4.50 to Rs. 5.50 per kg. Appellant has also produced computer print-out of clearances at Bombay on 3.12.1990 showing clearance of Khas Khas of Pakistan origin at Rs. 5.15 per kg., the quantity being 26 metric tonnes. These documents would suggest a sharp rise in prices some time at the end of 1990 or in the beginning of 1991.

4. The above circumstances would show that the Additional Collector was not justified in loading the price to Rs. 12.00 per kg. It is pointed out that the appellant filed a writ petition in the High Court of Delhi and had been permitted to clear at value of Rs. 9.00 per kg. and the appellant paid duty on that basis. Learned Counsel for the appellant states that the appellant is prepared to stand by that figure. In the absence of any material justifying the enhancement to Rs. 12.00 per kg., we accept the suggestion of the appellant and reduce the value to Rs. 9.00 per kg. The impugned orders are modified accordingly. The appeals are allowed in part.

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