

Everest Press Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-28-1998

Reported in : (1999)(83)LC454Tri(Delhi)

Judge : S T K., J Balasundaram

Appellant : Everest Press

Respondent : Cc

Advocate for Pet/Ap. : Shri. A.S. Sundar Rajan

Judgement :

1. The appeal is against order-in-original No. 139/91 dated 19.7.1991 passed by Collector of Customs, New Delhi confiscating a second hand SOLNA-425 Four Colour Sheet-fed Offset Printing Machine imported by appellant from Sweden the declared price of which was Swedish Kroner (SEK) 220000 but giving the appellant the opportunity for redemption on payment of fine in lieu of confiscation amounting to Rs. 70,000/-besides imposing penalty of Rs. 30,000/-. The said adverse order was passed by the Collector holding that appellant had imported the said machine mis-declaring it as 1983 make whereas it was actually of a much earlier make which being more than seven years, the benefit of import under Open General Licence (OGL) without production of an import licence was not available. The Collector, however, dropped the charge of mis-declaration of value which was proposed in the show cause notice and accepted the declared value. The appeal challenges the adverse findings in the order.

2. Shri A.S. Sundar Rajan, learned Counsel for the appellant stated that the charge of import being unauthorised on the ground that the machine was not of 1983 make but was of a much earlier year was wrong as the said declared year of the model was correct as certified by the Chartered Engineer. The fact that certain gears and circuit diagrams indicated earlier years 1970, 1971 and 1973 did not make the machine itself to be of that year. Learned Counsel submitted that if the machine was really as alleged, then the price adopted was high as the value of such an old machine should be much lower. He pleaded for the setting aside the order.

3. Shri M. Ali, learned Departmental Representative stated in reply that Engineer's certificate had rightly been rejected by the Collector as it did not show the serial number of the machine. In the certificate also, it was stated that no major repairs of reconditioning had been done on the machine but the gears showed different years 1970, 1971 and 1973. The circuit diagram for the machine showed the year 1970. He pleaded for the dismissal of the appeal.

4. We have considered the submissions. We have perused the record. We find that the Collector has referred to the examination report of the imported machine wherein it was revealed that a new label was affixed on the delivery unit of the machine showing the year 1983 which was simply attached with gum or adhesive and easily removable. The surface underneath was found to be similar to the surface of the rest of the machine. The Collector, therefore, drew the conclusion that the said new label was affixed after removal of the original label to create the impression that the machine was manufactured in the year 1983 to conform to the import trade control policy requirement regarding the age of second hand machine. The four gears of the machine had dates 3.2.1971, 2.11.1971, 23.12.1970 and 6.9.1973 as stated in the show cause notice. The circuit diagram found with the machine bore the date 16.11.1970. These factors were a clear pointer to the machine being of this vintage. As against this, appellant had relied upon the certificate of the Chartered Engineer which gave the year of manufacture of the machine as 1983. The certificate was not accepted as the serial number of the machine was not mentioned therein. Again, the certificate mentioned that no major repair or reconditioning had been done on the machine which was found to

be inconsistent with the gears of different years 1970, 1971 and 1973 fitted in a machine said to be of 1983 make. We find that the certificate of the Chartered Engineer which does not mention the serial number of the machine. At serial No.1 of the certificate reading "Description of machine", there is a remark that the machine can be identified by the mark Solna 425. This description is common to all such machines of that model No. and the serial number distinct and specific for the particular machine was not referred to at all. The rejection of the certificate was on this account and in the context of the other factors like the gears bearing different years 1970, 1971 and 1973 and the circuit diagram showing the date 16.11.1970 which clearly militated against the acceptability of the Chartered Engineer's certificate. The explanation of the appellant that the circuit diagram of 1970 continued to be applicable for machines claimed to be of 1983 make to justify the supply of such circuit diagram with the machine is not acceptable as also the plea that the machine of 1983 make was repaired with gears showing the years 1970, 1971 and 1973. The Collector's rejection of the appellant's plea in this regard is valid. The import had correctly been held to be unauthorised. The quantum of fine and penalty being moderate and not excessive and disproportionate, no reduction thereof is called for. We also see no force in the alternative plea that in the event of the machine being held to be not of 1983 make but of an earlier year, the value should be reduced. The machine has been imported on payment of the amount stated in the invoice. There is no case for ignoring the transaction value and scale it down. The order is upheld and the appeal dismissed.

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