Premier Auto Industries Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-21-1998

Reported in : (1998)(104)ELT770Tri(Mum.)bai

Appellant : Premier Auto Industries

Respondent : Commissioner of Customs

Judgement :
1. The appellant imported a consignment of auto accessories for which they filed Bill of Entry in the Nhava Sheva Custom House on 15-11-1991.

The declared value of the goods which were of Taiwan origin was US $ 4,390.40 CIF. The department found that the value declared by the various auto accessories were lower when compared with invoices for similar goods of Taiwan origin available with the Custom House. In this case the appellant did not produce manufacturer's invoices or price-lists. Show cause notice was issued on 17-1-1992 proposing to enhance the value from Rs. 1,15,251/- which was declared by the appellant to Rs. 2,32,345/- alleging under valuation to the extent of Rs. 1,17,094/-. There was also charge of mis-declaration under Section 111(m) of the Customs Act, 1962. After considering their reply to the show cause notice the Collector of Customs, Nhava Sheva Custom House passed the impugned order in which he held that though the invoices relied upon by the department in support of higher valuation are not contemporaneous yet such invoices could be used for determination of the value under the Residuary Rule 8 of the Customs Valuation Rules.

Accordingly the Collector of Customs passed the impugned order and ordered assessment of the consignment imported at the enhanced value as noted above. He, however, found that the charge of mis-declaration under Section 111(m) of the Customs Act, 1962 is not substantiated and dropped it.

2. Shri V.S. Nankani, the ld. Counsel for the appellant submitted that in this case out of 15 items of auto accessories the objection is only in regard to 11 of them and the department has accepted declared value for 4 of these accessories. The learned Counsel urged that the 6 invoices which the department relies upon for enhancing the assessable value are issued between September, 1989 to August, 1990 and these are from Singapore suppliers. On the other hand the imported goods are from Taiwan and the invoices for comparison are more than 2 years in time interval. The learned Counsel also pointed out that the description of the goods in the respective invoices is also not the same but varies.

It was further argued that the quantity which have been imported by the appellant are consistently higher than those in the invoices relied upon by the department. The learned Counsel contended that once the invoices are not taken as contemporaneous then it is for the department to show that between the date of those invoices and the present import there has been evidence of increase in prices of the goods concerned.

No such evidence has been produced.

3. Shri K.L. Ramteke, the ld. DR pointed out that the Collector has adopted the prices as shown in the Singapore invoices only to support valuation of the goods under the Residuary Rule 8 of Valuation Rules because the goods covered by these invoices are similar goods and the Collector has also considered the global trend of values of all goods have been on the increase over the last decade.

4. We have carefully considered the submissions. The department relied upon 6 invoices of suppliers from Singapore to support the enhancement of the assessable value. But the impugned order itself has observed that these are not invoices reflecting the prices of import that could be considered as contemporaneous. Therefore, in order to determine the value under the Residuary

Rule it has to be shown that the prices shown in the invoices relied upon by the department can form resonable basis with due adjustments. In this context it will be necessary for the adjudicating authority to deal with the relevant contention raised by the appellant in this regard that the quantity level of the goods imported by them is not the same as in the invoices relied upon by the Custom House. Examining this contention it is seen that this contention holds goods in most of these cases where the quantity of the auto accessories imported by the appellant is much higher than the quantity shown in the relied upon invoices. There is no effective rebuttal of this contention as affecting the price in the impugned order. Further the other point which is equally relevant is that the country of origin of the goods, the present import is from Taiwan and the invoice relied upon by the Customs House are from Singapore suppliers. Yet another aspect which in our view weakens the department's case on valuation is that the department has not been able to indicate any contemporary import of similar goods during intervening period from the date of the Singapore invoices to the present import to indicate consistent higher values and the impugned order relied upon a general observation that globally there has been an increase in values of all the goods for the last decade, which is not a very firm ground to take. Apart from this it is also found that for certain auto accessories no contemporaneous invoice has been relied upon at all by the Customs House, these are RX-9 Mirror, CH-348 Brake light, SPL-516 Brake light and ND-011 Brake Light. In the result, therefore, the enhancement of the value in this case by applying Rule 8 of the Customs Valuation Rules is not well founded. The impugned order is set aside and the appeal is allowed.