J.P.N. Impex Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-16-1999

Reported in : (1999)(83)LC353Tri(Delhi)

Judge : G Brahmadeva, R T Lajja

Appellant : J.P.N. Impex

Respondent : Cce

Judgement :

1. These are two appeals one by M/s. J.P.N. Impex and the other filed by the Revenue being aggrieved by two separate orders one in the case of M/s. J.P.N. Impex passed by the Collector of Customs New Delhi and the other in the case of the appeal filed by the Revenue passed by the Collector of Customs (Appeals). In both the appeals, the matter relates to the valuation of the poppy seeds imported from Pakistan and also to the contravention of the Import Control Orders. Both the appeals are taken-up for disposal together and are being disposed of by this common order.

2. Appearing for M/s. J.P.N. Impex, Shri S.K. Grover, Advocate submitted that the appellants had imported poppy seeds from Pakistan.

They had declared the assessable value of Rs. 8/- per kg. which had been enhanced to Rs. 20/- per kg. by the Customs on the basis of some reports in the newspapers. It was his plea that the suppliers were not related to the appellants, there was no allegation of any extra remittance and that the prices quoted in the papers could not be the sole basis for rejecting the transaction values. He referred to the following decisions: wherein it had been held by the Tribunal that the value in the bill of entry was to be accepted for assessment if no import of like goods at higher rate have been proved.Union of India v. Mahindra and Mahindra Ltd. . The Bombay High Court observed that the Customs authorities were bound to accept invoice value unless mutuality of interest between importer and foreign supplier and payment of additional consideration have been proved, (para 9).Vellore Roller Flour Mills Pvt. Ltd. v. Collector of Customs . The Tribunal had observed that the rejection of invoice price in the absence of any evidence of contemporaneous import of identical goods at the material time at a higher price was not sustainable.

The ld. Advocate submitted that the appellants were not contesting the case with regard to the import policy angles. The importer was a trader and were not an actual user.

3. In reply, Shri K. Shiv Kumar, JDR submitted that it was a case of under valuation and that the import was also unauthorised. He referred to the observation by the Collector of Customs that from the price quoted in the paper, the adjudicating authority had reduced the assessable value after deducting the customs duty, margin etc.

4. We have carefully considered the matter. We find mat the goods were imported from Pakistan under Invoice dated 19.4.1994. A price of Rs. 8/- per kg. in Indian Rupees CD? Bombay had been mentioned in the invoice. The importers filed the bill of entry and sought clearance under OGL with the declared assessable value of Rs. 8/- per kg. It was found that a proper licence was required for the import. The importers were issued a show cause notice and the matter was taken-up by the adjudicating authority, Collector of Customs, New Delhi. With regard to valuation, the adjudicating authority had gone with the price mentioned in the papers. On going through the adjudication order passed in the case of M/s. J.P.N. Impex, we find that no evidence had been taken into account by the Customs in rejecting the invoice price. We find that it was not a case of quotation by the foreign suppliers and there is no evidence of any higher price of contemporaneous

import. The ld.Advocate had referred to the Tribunal's and the High Court's decision/which have been referred to above in support of his contention that there was no valid basis for rejecting their invoice price and that the Customs has not been able to discharge the burden cast on them when the declared price was sought to be rejected.

5. On the facts and circumstances of the case, we agree with the contention of the appellants that there was no justifiable basis for rejecting their declared value and in enhancing the value based on paper reports.

6. In the appeal filed by the Revenue also, there are similar facts and circumstances. In that case, the ld. Collector (Appeals) had agreed with the importers that their declared value of Rs. 8/- per kg. was acceptable. Thus, with regard to valuation, we agree with the contention of the appellants in the case of J.P.N. Impex. With regard to the appeal filed by the Revenue in the case of CC, New Delhi v.Joshi Impex, we do not find any merit in the appeal filed by the Revenue with regard to the valuation.

7. As regards the imposition of redemption fine and penalty, we find that the goods had been imported in contravention of the Import Control Rules.

8. In the appeal filed by M/s. J.P.N. Impex, the Collector had imposed a redemption fine of Rs. 4 lakhs and a penalty of Rs. 2 lakhs. He had held that the goods have been imported in contravention of the Import Control Order and were liable to be confiscated. As we have discussed above, the declared value was acceptable and we reduce the amount of redemption fine from Rs. 4 lakhs to Rs. 2 lakhs (Rupees Two lakhs only) and the amount of penalty from Rs. 2 lakhs to Rs. 1 lakh (Rupees One lakhs Only).

9. As regards the appeal filed by the Revenue, we are not concerned with the imposition of the redemption fine and penalty imposed by the lower authorities.

10. Accordingly, on the question of valuation, the appeal filed by M/s.

Joshi Impex is allowed. The redemption fine is reduced from Rs. 4 lakhs to Rs. 2 lakhs (Rupees two lakhs only) and the penalty is reduced from Rs. 2 lakhs to Rs. 1

lakhs (Rupees One lakh Only). The refund however, will be subject to the decision of the Supreme Court in the case of Mafatlal Industries Ltd. .

11. The appeal filed by the Revenue in Appeal No. C/623/95-A is rejected. Ordered accordingly.