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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-23-1999

Reported in : (1999)(84)LC259Tri(Delhi)

Judge : G B Deva, R T Lajja

Appellant : Weston Components Ltd.

Respondent : Cc

Judgement :

1. This appeal arises out of arid is directed against the order No.42/MMS/94 dated 9.11.1994 passed by the Collector of Customs (Judicial), Custom House, New Delhi.

2. The appellants imported 1000 pieces of LNB converters declaring FOB prices of US \$ 22.50 per piece. Show cause notice was issued proposing to increase the value to US \$ 42.50 per piece, being the transaction value of similar goods imported into India vide Bill of Entry No.235573 dated 2.7.1993.

2.1. Show cause notice was duly replied stating that the contemporaneous import referred to in the show cause notice was for a small quantity and the import has also taken place even earlier. The contention of the party was negatived by the adjudicating authority.

The Commissioner who had adjudicated the proceedings has confirmed the demand of duty. He ordered that since the imported goods have already been

provisionally released to the importer that a sum of Rs. 50,000 /- be appropriated towards redemption fine in lieu of confiscation under Section 125 of the Customs Act, 1962 and Bank Guarantee furnished by the importer i.e. M/s. Weston Components Ltd. under Section 112 of the Customs Act. He ordered the value of imported goods in this case to be taken @ US \$ 42.50 per piece FOB for the purpose of assessable value for the assessment of duty and the differential duty to be recovered on the above basis from the appellants in terms of bond/bank guarantee.

3. Shri Shiv Dass, learned Advocate appearing for the appellants submitted that there is no evidence by the Revenue as to how and why the transaction value declared by the appellants is to be ignored. The burden is on the Revenue to prove that transaction value was not genuine. He submitted that during the month of March, 1993 there has been a contemporaneous import of some quantity 100 pieces of converters by another importer namely M/s. Clarion (P) Ltd. at the value of US \$ 22 per piece. In spite of placement of evidence before the adjudicating authority about the contemporaneous import, he has not looked into the important piece of evidence and not given any finding why he is not accepting the contemporaneous import.

4. Shri S.P. Rao, learned JDR appearing for the Revenue has justified the action of the department in enhancing the value based upon the contemporaneous import with reference to similar goods since the goods imported by others at US \$ 42.50 per piece FOB during the relevant time. However, he conceded that the Commissioner has not considered the evidence placed before him by the party. It appears that the party has filed an evidence to show that other importer imported the quantity of 100 pieces at the value of US \$ 22 per piece. In view of this, he has no objection to remand the matter for re-consideration and to give a clear finding with reference to the evidence placed by the party before him.

5. We have carefully considered the submissions made by both the sides and perused the record. The learned JDR fairly conceded that party has placed an evidence showing that other importer has also imported the same item for similar price. If it was so, it was duty of the adjudicating authority to discuss the issue with

reference to the evidence placed before him and to give reasons why he has not accepted that contemporaneous import. Since he has not considered the evidence placed before him and gave no reason for not accepting, we are of the view that this matter will have to go back for reconsideration. During the read-judication proceedings the party is at liberty to take all the corrected pleas with reference to the determination of the value of the impugned goods and on considering the pleas made by the party the adjudicating authority may pass suitable order in accordance with law.

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