

Sumangalam International Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-09-1999

Reported in : (1999)(66)ECC146

Judge : G B Deva, R T Lajja

Appellant : Sumangalam International

Respondent : Commissioner of Customs

Judgement :

1. These are two appeals filed by the appellants involving the common issue and therefore they are taken together and, are being disposed of by this common order.
2. The dispute is in respect of determination of value of Graphic 4L Toner for use in Canon HP SX LASER Printer and Graphic II Toner for use in Canon HP SX LASER Printer. According to the party, the item Graphic Toner of 160 Gms. of 200 bottles were imported declaring the price US \$2.80 FOB per bottle. Similarly, item HP4L PX Toner 160 Gms. of 300 bottles were imported at the value of US \$3.10 FOB per bottle. Against the price of US\$ 2.80 per bottle. The Assistant Commissioner has determined 4.14 per bottle and similarly value 5.5 per bottle in case of certain items as against declared value of US \$3.10 respectively.
3. Shri J.S. Agarwal, learned Advocate appearing for the appellant submitted that the Assistant Commissioner who adjudicated the matter has enhanced the value

based upon the import by M/s. Ramtron Systems.

He submitted that the goods imported by M/s. Ramtron Systems are altogether different from the impugned goods. They imported first item of Micrographics of 20 bottles and similarly six ultragraphic of 20 bottles as against ordinary Graphic 4L Toner and Graphic Toner II respectively as 200 bottles and 300 bottles. It cannot be said to be a contemporaneous evidence because of the fact that it does not tally either with quality of the goods or of the quantity. He contended that the quality imported by M/s. Ramtron Systems is a superior quality and that too of little quantity as against ordinary graphic of 200 and 300 bottles imported by the appellants. Further, subsequent to the importation similar goods were imported through customs house and they were cleared at the similar price as declared and in respect of evidence placed by the party before the adjudicating authority, she was not correct in discarding the same on the ground that details are not available.

4. While countering the arguments, Shri Prabhat Kumar, learned SDR submitted that not only the goods imported by M/s. Ramtron Systems but also the export price list of other manufacturers were referred to in the order and taking into consideration the difference in between the quality imported by other importer and the appellant on reasonable discount was allowed in determining the assessable value. Further, he drew our attention to the finding given by the Assistant Commissioner in page 4 of the order that wherein she observed as follows: These imports pertain to bulk import of toners in 1993 and are not contemporaneous. The details of the brand, type of packing compatibility of these goods are also not available and accordingly these cannot be relied upon.

5. He justified the order passed by the Assistant Commissioner and in the absence of details of the subsequent import the assessing Authority is right in relying upon the similar goods imported by other importers.

6. We have carefully considered the submissions made by both the sides and perused the records. There is some force in the argument advanced on behalf of the assessee that the goods imported i.e. Micrographic 4L Toner for use in Canon HP SX and Ultragraphic by M/s. Ramtron Systems cannot be compared to the goods of ordinary graphic imported by the appellants since the similar goods of

same nature and quality are available. We find that subsequent to the import, the appellants have imported the same goods for similar price through Bombay Custom House.

The details of import are available on record. But the assessing authority has observed that details are not available. In these circumstances, we are of the view that the matter will have to go back for reconsideration. The jurisdictional adjudicating authority is directed to examine the issue afresh with reference to the subsequent import and to pass an appropriate order accordingly, after providing an opportunity to the appellants. The appellants may make use of this opportunity and substantiate their claim by adducing the evidence during the adjudication proceedings.

Thus, these two appeals are allowed by way of remand. Ordered accordingly.

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