

Birla Tyres Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-05-1999

Reported in : (2000)(88)LC861Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Birla Tyres

Respondent : Cc

Judgement :

1. The above appeals are relating to valuation have been filed by the appellants against the decision of the Collector of Customs (Appeals), Bombay made in Order-in-Appeal No. 256/92-BCH, dated 4.6.1992 whereunder, he dismissed the two appeals of the appellants confirming the orders of the Assistant Collector of Customs, made in S/26-Vol-273/91-IIB and S/26-949/91-IIB dated 20.11.1991 and 29.10.1991 enhancing the value for purpose duty @ US \$ 2077 per M.T. from US \$ 1925/- CIF for 2 consignments and for third consignment from US \$ 1950/MT.2.Facts of the case were that the appellants were manufacturing automotive & other tyres from synthetic/natural rubber, for manufacturing the above goods they imported three consignments of Polyester Butyl-301 from Polysar International SA, Switzerland.3 Oct. 1991 Inv. No. 030-55611 1925 MT 42.89630 Sept. 1991 Inv. No. 030-55355 1925 MT 42.9319 Sept. 1991 Inv. No. 030-55209 1950 MT 42.916 The Assistant Collector by his Orders dated 20.11.1991 and 29.10.1991 had enhanced the value on the basis of the Import made on 2.9.1991 by Goodyear India Ltd. to 2077 US \$ PMT. The appellants filed

2 appeals to the Collector of Customs (Appeals) who by a common order had held that the import of the appellants and the Goodyear the goods were identical of almost the same quantity, from the same country of origin but by 2 different importers at 2 different prices. He also held that one of the two prices was the correct price and the appellants were not able to substantiate why the goods imported were sold for such a low price. He did not accept the appellants contention that the matter have to be looked into according to Rule 5(iii) of the Customs Valuation Rules, as the appellant did not produce any documentary evidence to support the same. Hence the present appeals.

3. Dr. Nitin Kantawala challenges the impugned orders. He states that there were also imports of other manufacturers viz. CEAT Ltd. at a price of 1900 Bombay Tyre International at a price of US \$ 1950 PMT and in both cases the invoices were of 9th Sept. 1991. He compared with the invoices in the present case viz. 9th Sept. 1991, 30th Sept. 1991 and 31st October 1991. He has also cited before us, the imports made by other importers viz. Bombay Tyre International, J.K. Industries Ltd. Automotive Products Co., M/s. Super (India), M/s. Super Strong Polymers (P) Ltd. and M/s. Bombay Tyres International Ltd. The dates of shipments were varying as also the respective invoices dates. Quantity also varies. Prices also varies from 1925 to 2110 US \$.

4. It is contended by Dr. Kantawalla that the approach of the Collector under Rule 5 of the Customs Valuation (Determination of Price of Imported Goods) Rules is wrong in as-much as he has ignored Rule 5(3) of the said Rules since he has failed to take note of the lowest value i.e. 1900 US \$. He also stated further that for the purpose of valuation of imported items has to be made under Rule 3(i) and Sub-rule (ii) of Rule 3 that if valuation could not be determined then value should be determined by proceeding sequently Rule 4 to 8 of those Rules. The compared price of Goodyear cannot be made inasmuch as the quantity could not be compared with the quantity of the goods under consideration. He also cited the judgements like in Sai Impex's case to buttress his argument. He also stated that the department has not discharged its burden.

5. As against this, Id, D.R. invited our attention to the Judgment of the Calcutta High Court in Manjushree Minerals v. CC .

In paragraph 17, especially the observations.

6. We have considered the rival submissions. In this case, the import had taken place some time in October and in November, 1991. The quantity involved is about 45 MT. each approx. The quantity of the Good Year import was 85 MTs. The import was made on 20th September 1991 and 15th June 1991. In our view while the differential price appeared to be substantial the quantity differs viz. 25 MTs. The date of purchase order in the instant case is 20th September, 1991 and Oct. 1991 whereas only import had taken place in November, 1991. To us it stands to reason that price varies from day to day. In the Judgment of the Calcutta High Court in Paragraph 17 it has been held as follows: 17. The language of Sub-section (1) of Section 14 is absolutely clear. It is not the actual price which is paid for the goods which is relevant for the purpose of determining the assessable value. The value of the goods for the purpose of charging customs duty shall be deemed to be the price at which such goods or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation or exportation as the case may be in the course of international trade, where the seller and the buyer have the interest in the business of each other and the price is the sole consideration for sale or offer for sale. Thus even if certain goods have been purchased by an importer at a value, say, for example, US \$ 100 per M.T. for the purpose of determining the assessable value, the Customs authorities would have to determine the price at which such or like goods are ordinarily sold or offered for sale at about the same time and at about the same place of importation in course of international trade. If such valuation is found determined by the proper officer at \$ 200 per M.T. then for the purpose of assessable value under Section 14, the value would be treated as US \$ 200 Per M.T. However, the valuation for the purpose of Customs duty i.e.

assessable value, has nothing to do with the actual cif value of the goods which in the example given above is only \$ 100 per M.T. In other words under Section 14(1) of the Act, the value for the purposes of assessment of duty would be the

deemed value. Even if the invoice price is proved to be true price as agreed between the parties, for it is the international market price which is the real value for the purpose of Customs Duty. Thus the deemed value in terms of Section 14 is the price at which such goods are ordinarily sold or offered for sale at the place of importation.

7. We do not straightaway accept the argument of the counsel that transaction value has to be accepted straightaway. However, from statement of the said import shown as indicated in the statement that the price varies from 1950 to 2000 per M.T. Unfortunately date of shipment is not the same. The Good Year's price do indicate a particular trend in the market. We, therefore, accept the Good Year's Price as the goods which could be available on price at which ordinarily sold at the place of importation. Hence the transaction value has to be accepted in this case.

8. We may also note that the Collector (Appeals) has dismissed the cases that no evidence has been given. We feel that when the prices were available, the lowest of the price has to be taken in terms of Rule 5(3) of the said rules. In view of the above, we are not considering the other points discussed by both sides. Since we are allowing the appeals, other points raised by Dr. Kantawala including case laws have not been considered by us. We, therefore, allow the appeals of the appellant and accept the transaction value as the correct value in this case.

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