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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-07-1999

Reported in : (1999)(85)LC629Tri(Mum.)bai

Judge : S T Gowri, J S Murthy

Appellant : Deepak Electronics Ltd. and anr.

Respondent : Cc

Judgement :
1. In the order of the Tribunal on the appellant's appeal, the Tribunal had confirmed the finding of the department that the value of the jumbo rolls of video tape imported by the appellant was under-declared and that it ought to be the value at which the goods were imported by another importer Hariram Govindram (HG for short).

2. The importer appealed to the Supreme Court from the Tribunal's order. The Supreme Court in its order accepted the contention of the appellant before it that its submission before the Tribunal that because of the difference in weight there was a difference in price between the two sets of goods and the two therefore cannot be considered to be identical had not been considered. It therefore sent the matter back to the Tribunal for justice. This matter is thus now before us.

3. The advocate for the appellant contends that the goods imported by HG weighed at 64.81 kg. per roll whereas the goods imported by the appellant

weighed 22.68 kg. He contends that the weight of the film will be directly proportionate to the thickness. The goods imported by the HG being thicker were therefore of a higher value. The comparison between the goods imported by the appellant and those imported by HG therefore are unreasonable. He also relies upon an affidavit affirmed by Mahesh Kumar director of the appellant. The affidavit asserts that the thicker the tape the better the performance. The thickness of tape used in professional application is greater than that used in other application.

4. The departmental representative contends that the averment in the affidavit are those of an interested party and not supported by any independent technical evidence. The mere fact of the increase in weight would not justify the conclusion that the goods were not of different quality and it is not comparable. The nature of the packing might also differ. The goods imported by the appellant were in cartons whereas the goods packed by HG were in pallets. This could have accounted for the difference in weight.

5. We do not dispute the contention of the advocate for the appellant that thicker tape would weigh more than thinner tape of the same composition, there being more materials present. From this however to conclude that the goods imported by HG were of superior quality, would be an act of faith. The performance and quality of audio and video tape depends on the quality of each of the two layers comprising that each of them is composed of a plastic layer, in this case polyester coated on one side with metal oxide. It is this coating that enables the tape to be used as a recording medium. The value of the product therefore, would be contributed to by both the layer of oxide and the polyester layer on which its oxide is coated.

6. We agree that there is a substantial difference in weight of the goods. At least a part, can be explained by fact of difference in packing. The packing of HG's goods is pallet as the invoice in question indicates, whereas the goods under consideration were not pallets.

Whether difference in packing will account for the substantial difference in weight is not a question that can be answered directly.

The various contentions were raised by the departmental representative about the composition, manner of packing, which contributed to increase weight are nothing more than conjecture and have to be dismissed. At the same time, it has not been shown that the difference in weight alone justifies the view that the goods were so different that comparison between the two for the purpose of valuation was not permissible. As we have emphasized, the difference in weight is its gross weight and it has not really been shown what is the weight of the unpacked tapes. Even if there is such a difference, it has not been shown that this justifies treating the few sets of goods as types of different quality.

7. The contention in the affidavit of Mahesh Kumar that the tapes containing a thicker layer of polyester are used for professional application and hence are of higher value, therefore have not been substantiated by any technical literature, reference to a book of repute or such similar material. The qualifications of Mahesh Kumar it appears, are nothing more than that he was an electronic engineer and was a director of the company. The fact of his being a director of the appellant company justifies considering his affidavit, an unsupported averment, with cautious skeptism. He is after all an interested party.

It is therefore, not possible to conclude that the difference in weight could account for difference in value, the enhancement of the value of the goods to that of HG was hence justified. The conclusion in the Tribunal orders therefore with regard to both appellants' stands.

Appeals accordingly disposed of.