

Commissioner of Cus. Vs. General Electric Plastic India

Commissioner of Cus. Vs. General Electric Plastic India

SooperKanoon Citation : sooperkanoon.com/16316

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-29-1999

Reported in : (2000)LC445Tri(Mum.)bai

Judge : S T Gowri, J S Murthy

Appellant : Commissioner of Cus.

Respondent : General Electric Plastic India

Judgement :

The question for consideration in this appeal is the value for assessment of two commodities, poly carobonate compound (Lexan) and modified ppo compounds with the trade name Noryl, imported by the appellant from M/s. General Electric Plastics, BV, Netherlands. The notice issued to the respondent in this appeal increased the value on the ground that it was related to the supplier and also on the ground that some goods were supplied to other persons contemporaneously at higher prices. Assistant Collector did not give any specific finding on the charge of relationship. On appeal the Collector (Appeals) accepted the contention of the importers that it is not related to foreign supplier. He held that the prices at which the goods were imported to be acceptable as assessable value under Section 14 of the Act. Hence this appeal by the Department. This later finding is questioned in this appeal.

2. The imports in dispute were made in 1992. The respondent had imported during this period from March to December, 1992, 935 M.T. of Lexon; priced at US \$ 2.50

per kg. GIF. The Department proposed to apply the price of US \$ 3.10 per kg. GIF, this being the price at which this commodity were imported by Rishab Instruments. The Collector (Appeals) has found that there were import by other importers of this commodity at US \$ 2.5 per kg. Therefore even accepting the Department's contention that the lowest of transaction value, which is US \$ 2.5 per kg., should be made applicable in terms of Rule 5(3) of the Valuation Rules.

3. The Department's appeal with regard to the valuation of this item and the other proceeds on the assumption that the prices mentioned at the minimum in the supplier's letter dated 19-3-1992 to the respondent are at variance at which the prices of goods were actually supplied. In the letter the respondent had indicated the following minimum prices for Indian customers at the relevant time for Lexon.

Up to 1 M.T. US \$ 3.5 kgs.

Up to 10 M.T. US \$ 2.90 per kg.

Up to 100 M.T. US \$ 2.60 kgs.

4. It is true that there is a mention in the letter about the prices for quantities between 10 M.T. and 100 M.T. However, if as contended by the department these prices are not applicable, the Collector (Appeals) finding that the lowest of transaction value available should be adopted as to stand, it is also not specifically questioned in the appeal.

5. Even apart from this consideration, we are unable to interfere with the Collector's finding with regard to this commodity, the chart furnished by the Advocate for the respondent shows suppliers has been adopting more or less a consistent stand in its pricing based on its quantity. Respondent was the largest single importer of this commodity totalling 935 tonnes during the period. Rishabh Instruments imported 10 tonnes at US \$ 3.10 per kg., by Kapoor Plastics of 15 tonnes at US \$ 2.5 per kg., and Shah Polymers 21 tonnes at US \$ 2.50 per kg. Various other importers were imported the goods at US \$ 2.5 per kg. There is nothing in the appeal with regard to this commodity to show that consideration other than the commercial considerations were adopted to determine price of its

commodity and that there is, generally in the business, relationship of quantity ordered and the prices charged.

6. We now consider the other product Noryl. Here the import by the respondent at US \$ 2.65 per kg., is said to be compared with the import by Godrej at US \$ 3.40 per kg. The import by the respondent at US \$ 2.6 per kg., is sought to be compared with the import by the Godrej at US \$ 3.40 per kg. The total import by the respondent for over this period is 318 MTs. (out of 150 MTs was accounted by one import). In our opinion it would be unfair to compare price of this commodity with prices or charges for quantity compare to too low this quantity. It has been contended that the respondent was the single largest buyer of the commodity during this period March, 1992 to September, 1993, other than the respondent this item was imported by Modi GBC, a quantity of 15 MTs, which has been priced US \$ 3.10 to 3.50 per kg. Once at this point must note that respondent's letter dated 19-3-1992, while emphasising that the quantity would continue to be major factor in determining the price, also mentioned that apart from quantity, factors like exchange rate, availability, lead time, would play a part in determining the prices. As has been emphasised by the Supreme Court in *Basant Industries v. Additional Collector of Customs - 1996 (81) E.L.T. 195* that a mere comparison of two invoices by itself cannot always justify the view that there has been undervaluation. The Court has emphasised that relationship between the supplier and importer has to be kept in mind and that prices are often negotiated between buyer and seller.

While, even without considering this aspects, the fact that the quantity purchased by Godrej is much lower than the quantity purchased by the respondent itself justify lower price, the fact that the respondent being a large scale, regular buyer should have been offered a lower price also can not be ignored.

7. We, therefore, see no reason to interfere with the finding of the Collector (Appeals). Appeal dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com