

Goyal Impex and Industries Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-13-1999

Reported in : (1999)(66)ECC694

Judge : K Sreedharan, N T C.N.B.

Appellant : Goyal Impex and Industries

Respondent : C.C.E.

Judgement :

1. Appellant is an importer of Acrylic Staple Fibre. They imported a consignment of 19391.300 kgs. of above substance from M/s. Fisipe Fibras Sinteticas De Portugal SA. This was covered by Invoice No.ME/98002001/98 dated 16.2.98 and Bill of Lading dated 31.10.97. The goods were invoiced at U.S.\$ 1.200 per kg. GIF Mumbai. The Total value declared for the consignment was US \$ 23509.56 (Rs. 9,16,873) CIF. Objection was raised by the Appraiser CIF, Ludhiana stating that the value declared is low and that identical goods were assessed and cleared at US \$ 1.75 per kg. CIF against Bill of Lading dated 10.10.97. On the basis of this objection notice was issued to the appellant to show cause why duty should not be levied on the total value calculated at U S \$ 1.75 per kg. on the total quantity cleared. Importer, namely the appellant filed his written objection and documents, to support his stand. They were heard on the issue. Thereupon the Commissioner held that the price of the goods imported was US \$1.75 per kg. CIF and rejected the appellant's contention and confirmed the demand of differential duty on the basis of the higher value. As result of this finding the appellants were directed to

pay a total sum Rs. 13,81,710.00. Aggrieved by the above order passed by the Commissioner, this appeal has been filed.

2. Alongwith the appeal the appellant moved an application for waiver of pre-deposit of Custom duty of Rs. 13,81,710. The Tribunal by Order dated 16.10.98 dispensed with the requirement of pre-deposit for the entire amount of Customs duty and stayed recovery of the same during the pendency of the appeal.

3. Learned Counsel representing the appellant raised the following points for our decision: Goods were imported as per Invoice No. ME/98002001/98 dated 16.2.98.

These goods were invoiced at US \$ 1.200 per kg. CIF Mumbai. The total value declared for the consignment was Rs. 9,16,873. Appellant also imported four consignments covered by Bill of Lading dated 31.10.97, 21.11.97, 28.11.97 and 5.12.97. The differential duty involved in the said four consignments is Rs. 11,16,710. The consignment was shipped by foreign supplier on their own. Appellant did not accept the documents as the price of fibre decreased in the International market. Consequently, bank returned the documents to the supplier and thereafter foreign supplier negotiated the price with the appellant and the deal was finalised by 10th February 1998.

Accordingly goods were sold to the appellant at US \$ 1.200 per kg.

on 90 days D A basis. It is the further contention of the appellant that price of Acrylic Staple Fibre in the International market was ranging between 1.05 US \$ and 1.25 US \$ per kg. subject to quality and type factor. Foreign supplier, it is argued, sent the goods without any order being given by the appellant in December 1997 and the seller was incurring heavy demurrage and detention charges. In such a situation, the seller renegotiated the documents on prevailing rates of similar goods and agreed to give 90 days credit to avoid further losses on account of demurrage and detention charges. Seller had shipped the goods covered by Bills of Lading dated 31.10.97, 21.11.97, 28.11.97 and 5.12.97 without consent of the appellant. The appellant had never opened any Letter of Credit in respect of those goods either. Those goods were also purchased by the appellant

on re-negotiation at the rate of US \$ 1.20 per kg. In the above circumstances it was argued that the Commissioner was clearly in error in levying duty as per order impugned in this appeal.

4. Learned SDR countered the arguments advanced by the appellant on the basis of the provisions contained in Section 14 of the Customs Act, 1962. According to him goods purchased by the appellant were offered for sale by the foreign supplier at US \$1.75 per kg. as evidenced by Export. Contract No. 970787 dated 11.7.97. Even conceding for arguments sake that the said contract was not accepted by the appellants the goods covered by it had incurred demurrage and detention charges. They were borne by the appellants. It is thereafter the appellant agreed to purchase the consignment at US \$ 1.20 per kg. In such a situation the liability undertaken by the appellant must also go in to determine the value of the goods. He further submitted that copy of printout of Bombay Customs for clearance of acrylic fibre from 28.11.97 to 28.2.98 shows that acrylic fibre of same type concerned in this appeal was cleared by the customs authorities on 12.12.97 at the value of 1.750 US \$ per kg. From this it is evident that goods of the nature concerned in this appeal were, in fact, sold and offered for sale at 1.750 US \$ per kg. Thus, it is contended, the impugned order is correct and it calls for no interference.

5. Section 14 of the Customs Act, 1962 deals with valuation of goods for purposes of assessment. This section, insofar as it is relevant for decision of this appeal is concerned, reads: (1) For the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such 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 no interest in the business of each other and the price is the sole consideration for the sale or offer for sale : Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under Section 46, or a shipping bill or bill of export, as the case may be, is presented Under Section 50.

The provision contained in the unamended section 14 which has not undergone any material change as far as this appeal is concerned came up for consideration before the Hon'ble Supreme Court in the decision reported in *Rajkumar Knitting Mills (P) LTD. v. C.C, Bombay* . Their lordships observed that the value of the goods is to be ascertained on the basis of the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation. The relevant date would be the date of importation or exportation. According to their Lordships for the purpose of assessing value of the goods it is necessary to ascertain the price at which the consigned goods or similar goods are sold or offered for sale for delivery at the time and place of importation. It is also made clear that the words 'ordinarily sold or offered for sale' do not refer to contract between the supplier and the importer but it refers to the prevailing price in the market on the date of importation or exportation. In the light of this authoritative pronouncement rendered by the Supreme Court the price of acrylic fibre alleged to have been agreed to between the foreign supplier and the appellant at 1.20 US \$ per kg is not of any consequence. Even according to the appellant he had to pay to the seller not only the price at the rate of 1.20 US \$ per kg. but also to meet demurrage and detention charges incurred on the goods. The actual value of the goods purchased by the appellant was not 1.20 US \$ per kg. as contended by the appellant.

6. Documents produced by the appellant, namely, copy of printout of Bombay Customs House for clearance of acrylic fibre for the period from 28.11.97 to 28.2.98 shows that acrylic fibre of Portugal origin was cleared at the rate of 1.750 US \$ per kg. Acrylic fibre of other countries were cleared for lesser value. According to Section 14, value of such or like goods is to be taken into consideration. Therefore, value of acrylic fibre of other countries cannot have any relevance in valuing acrylic fibre of Portugal origin. There is clinching evidence in the case to show that acrylic fibre of Portugal origin was being cleared at the rate of 1.750 US \$ per kg. Fibre which was thus cleared on 12.12.97 was sold by the same foreign seller to M/s. Kohinoor Woollen Mills. That value alone has now been taken by the Commissioner in the impugned order.

7. Learned Counsel representing the appellant had submitted that his client not only paid negotiated price at 1.20 US \$ per kg. but also paid demurrage and detention charges incurred by the seller. Those expenses have also gone to increase the value of the goods.

8. The goods cleared by the appellant were offered to him by the foreign seller at 1.75 US \$ per kg. as per Contract No. 970787. The goods covered by that contract reached India in November/December 1997.

Identical goods of Portugal origin was sold by the same foreign seller to M/s. Kohinoor Woollen Mills at 1.75 US \$ per kg. This goes to show that Acrylic Fibre of Portugal origin was sold or offered for sale for delivery at the time and place of importation at 1.75 US \$ per kg. It therefore follows that the Commissioner in the impugned order rightly fixed the differential duty on the basis of the value of Acrylic Fibre at the rate of 1.75 US \$ per kg. We do not find any infirmity or illegality in the impugned order passed by the Commissioner.

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