

S.P. Mehta Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-24-1999

Reported in : (2000)(88)LC281Tri(Delhi)

Judge : S Kang, a T V.K.

Appellant : S.P. Mehta

Respondent : Cc

Judgement :

1. The issue involved in the present appeal filed by Shri S.P. Mehta is the valuation of the car imported by him.

2. Briefly stated the facts are that Shri Mehta imported a Nissan Sunny car 1990 in 1996. According to purchase order dated 11.6.1990, issued by Nissan U.K. Ltd., the price of car was \$6561 FOB. The Assistant Commissioner assessed the car to duty by taking price as \$ 8599 based on Parker's Car Price Guide and allowed a discount of 15%. He further allowed a depreciation of 58% on the discounted price and after adding freight and insurance, the assessable value arrived at was Rs. 1,95,852/-. The Assistant Commissioner's findings are that the purchase order is not the invoice from the manufacturer; the discount of \$ 175 has been extended without indicating the basis thereof; the invoice does not show the price at which car is ordinarily sold in the course of international trade and, therefore, the assessable value was determined on the basis of value given in Parker's Car Price Guide 1996 in respect of the car of the year 1990. He relied upon the decision in

Pram Kumar v. CCE . An amount of Rs. 23,646/- as freight was added which was calculated from the country of origin as per decision in Ravi Gupta v. Commissioner of Customs 1992 (57) ELT (T) : 1992 (38) ECR 55 (T). On appeal, the Commissioner (Appeals) accepted the declared price of the car as the Parker's Car Price Guide did not include the exact same model of the car. He, however, disallowed the special discount of \$ 175 holding the no special discount, in any form whatsoever, is to be allowed. He directed the Assistant Commissioner to add freight, insurance and cost of car stereo as per norms in the declared price and refund the excess duty collected from the Appellant.

3. Shri G.S. Chaman, learned advocate, submitted that the declared price in U.K. includes freight, insurance and landing/handling charges and as such the car price in U.K. cannot be taken as FOB Price in Japan; that the small stereo was fitted as part and parcel of the car and car invoice price was inclusive of its price. He relied upon the decision in Collector of Customs v. Kumaran Krishna Kutty in which it was held that freight from the country of origin is to be added in the assessable value. He also placed reliance on the decision in the case of Inderjit Singh Bawa v. Collector of Customs, Bombay wherein it was held that there is no need to go to the catalogue price or any other price or an imported car price book to ascertain the value when a document produced by the importer himself is available and this document represents the true amount paid by him. He, further, submitted that instead of 58% depreciation, he was eligible for 66% depreciation as it is to be worked out upto the date of Bill of Entry and not upto the date on which car was given for transportation to India (5.2.1996); that depreciation has to be worked out on the basis of the age of the vehicle on the date of its Import into India. Reliance is placed on the decision in Dr. Subhas Chandra Reddy v. Collector of Customs in which it was held that "In the absence of specific provision and details of Customs House Practice with reference to allowance of depreciation, we hold that irrespective of the fact whether it was used or otherwise the appellant is entitled to get such permissible depreciation from the date of purchase till it is landed in India to determine the value of old car on the date of importation." He finally submitted that \$ 175 discount is to be deducted from the price as per clarificatory Note below Rule 4 of Customs Valuation (Determination of Price of Imported Goods) Rules; that the price actually paid is the total payment made by the buyer to the seller for

the imported goods; that diplomatic concession is to be deducted from the price. He relied upon the decision in *Dr. A. Algappan v. Collector of Customs* 4. Shri Prabhat Kumar, learned SDR, submitted on behalf of Revenue, that the last paragraph of the impugned order is very clear according to which no special discount is to be allowed. He relied upon the decision in *O.P. Nagpal v. Collector of Customs* diplomatic discount 10% was disallowed as the appellant therein failed to establish that 'diplomatic discount' was extended to all diplomats.

He also mentioned that as per instructions of the Government regarding depreciation to be allowed for valuation of motor car, 46% is to be allowed for first 4 years and if car is more than 4 years old, 2% depreciation is to be allowed for every quarter subject to the maximum limit of 70%; that the Assistant Collector allowed the depreciation 46% for first 4 years and 12% for next 6 quarters upto 5.2.1996. In reply, the learned Advocate mentioned that the decision in *O.P. Nagpal's case*, supra, has been reversed.

5. We have considered the submissions of both the sides. We agree with the learned Advocate appearing for the appellant, that there is no reason for adding the cost of car stereo to the price of the car. The appellant has contended that no extra cost of the stereo was paid since it was one of the standard item of material to the car whose cost stood included in the price of the car. The Revenue has not brought any evidence to rebut this submission. Coming to the question of depreciation to be given, the appellant has claimed 3 1/2%, 3% and 2 1/2% for every quarter during the 2nd year, 3rd year and 4th year respectively, whereas as per instructions dated 26.5.1993, it is only 3%, 2 1/2% and 2% as for every quarter during the 2nd year, 3rd year, and 4th year respectively. Thus there is initial mistake in working out the total percentage of depreciation by the appellants. No reasons have also been advanced by him in the appeal memorandum or by the learned advocate during the course of hearing to enhance the percentage. The appellant has requested to work out the depreciation upto the date of filing of Bill of Entry which is allowed in view of the ratio of the decision in the case of *Dr. Subhas Chandra Reddy*, supra. Regarding assessable value of car, we observe that the Collector (Appeals) has already ordered that the declared price of the car is to be accepted.

The appellants has claimed that this price is inclusive of freight insurance and landing charges. This contention has not been substantiated by the appellants. We, therefore, do not agree with the appellants that freight & insurance, as ordered by the Collector (Appeals), has not to be included in the value as his contention has remained unsubstantiated. The Commissioner (Appeals) has also disallowed special discount without specifying any reason. Even the Assistant Collector has disallowed the said discount merely observing that the discount has been extended without indicating the basis thereof. We observe that no reason has been advanced in the impugned order for disallowing the discount. The appellant has rightly submitted that the price actually paid is the total payment made by the buyers to the seller for the imported goods which is the transaction value under Rule 4 of the Customs Valuation (Determination of Price of Imported Goods) Rules. This was the view of the Tribunal in Inderjit Singh Bawa case, supra, wherein it was held that Section 14 of Customs Act refers to value as the price at which imported goods are sold or offered for sale for delivery at the time and place of importation. The price actually paid by the importer that is after taking into consideration the discount is to be taken as the transaction value unless it is proved by the Department that such a discount was not actually given.

In view of this the discount has to be deducted from the price.

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