

Resina Combination Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-30-1999

Reported in : (1999)(114)ELT860Tri(Mum.)bai

Appellant : Resina Combination

Respondent : Commissioner of Customs

Judgement :

1. The question for consideration in this appeal is the valuation of a consignment of tung oil imported by the appellant. The oil, which was of Argentine origin, imported in July and August 1992; and value declared at US. \$ 1050/- per M.T. C&F. Having regard to the importation of tung oil at Bombay at substantially higher prices the Department was of the view that the goods were required to be valued at US \$ 3100 per M.T. C&F, at which price a consignment of tung oil by M/s. Bakelite Hylam had been imported at Mumbai. Enhancement of the value was therefore proposed and also confiscation of the goods for misdeclaration under clause (m) of Section 111. The Collector enhanced the value as proposed and ordered confiscation of the goods with an option to redeem them on payment of fine of Rs. 1 lakh. Hence this appeal.

2. The appellant is absent and unrepresented despite notice. We have seen the appeal papers and heard the departmental representative.

3. We are unable to accept the contention that the transaction value would straight away be accepted. The value of the goods has been enhanced by invoking Sub-

section (1) of Section 14 of the Act. The price in Section 14(1) is a deemed price, the price at which such similar goods are imported by persons not related. In the face of importation of identical and similar goods at very higher price and in the absence of justification for the lower price, the Collector was entitled to not to accept the transaction value. No difference in terms of specification or in their technical characteristics exist between the two consignments referred to in the order. The notice proposed two instances of importation, one by Bakelite Hylam and the other by Formica India. Tung oil imported by Bakelite Hylam was not of Argentine origin but Paraguayan origin. The oil imported by M/s. Formica India was of Argentine origin. In the face of these two contemporaneous imports of the oil we are of the view that the value declared could not be accepted. The question is which of these two value is to be accepted. The only reason that the Collector has given for applying the value of the importation by Bakelite Hylam is that the goods were supplied to it and the appellant by the same supplier, M/s. NIVRE. This by itself is not ground for applying that particular value. A supplier may supply goods of various kinds, qualities, grades, and of technical specifications to various customers. The fact of supplier being common, cannot justify the comparison of value. Further, the Valuation Rules themselves postulate comparison with value of identical goods failing which with similar goods. Similar goods are of the same country of origin, at which the goods being valued. Even if we accept the contention of the departmental representative that there is no real difference in the characteristics of the oil from Argentina and Paraguayan, we would have to apply the lower of the two values as provided in Rule 5(3) of the Valuation Rules, i.e., US \$ 2125/- per M.T. C&F.4. We accordingly allow the appeal in part and set aside the impugned order. The goods shall be valued at US \$ 2125/- per M.T. C&F. The redemption fine is also accordingly reduced to Rs. 75,000/-. We do not find any ground to reduce the penalty. Consequential relief if permissible by law.