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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-02-1999

Reported in : (2000)(90)LC309Tri(Delhi)

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

Appellant : Margra Industries Ltd.

Respondent : Cc

Judgement :

1. The appellants had imported marble of Italian origin covered by Bills of Entry dated 31.12.1998 and 1.1.1999. They declared the value of the imported goods at US $ 165 PMT (CIF). Quantity covered by the first bill of entry was 90.30 MT and that of covered by second bill was of 88.30 MT. On the allegation that the goods were under valued, proceedings were initiated by the Customs authority and they enhanced the value to 193.45 US $ PMT. Reason for taking such an action was that price of marble imported by M/s. Dee Pearl New Delhi under bill of entry No. 115367 dated 2.12.1998 was 193.45 US $ PMT CIF. The appellants waived show cause notice and personal hearings because they were subjected to container detention charges of Rs. 16,512 per day and ground rent of Rs. 5,600 per day. A total amount under these two counts as on January 11, 1999 reached Rs. 6,91,674/-. The adjudicating authority by order dated 6.3.1999, confiscated the goods whose value was fixed at Rs. 14,90,854/-. He imposed a redemption fine of Rs. 14 lakhs under Section 125 of the Customs Act and penalty of Rs. 7 lakhs under Section 112. This order is under challenge.

2. The main ground urged by the Ld. Counsel representing the appellants is that the adjudicating authority passed the impugned order in violation of the principles of natural justice inasmuch as he did not supply copy of documents relied on by him to enhance the value of the goods to 193.45 US $ PMT CIF.3. Adjudicating authority in the impugned order observed "on the basis of contemporaneous imports covered by BE No. 115367 dated 2.12.1998 (M/s. Dee Pearls C-1/1, Rajouri Garden New Delhi) the CIF value of consignment was proposed to be raised to US $ 193.45 PMT CIF. Thus the total CIF value works out to be Rs. 14,90,854 (7,50,973/- and 7,32,556/- respectively) which is the value of the offending goods." 4. It is on the basis of Bill of Entry 115367 dated 2.12.1998, value of the goods imported has been enhanced. No where in the impugned order, it is stated that the marble covered by the above bill of entry was similar to the marble imported by the appellants. Adjudicating authority has not stated that the goods covered by the above bill of entry was of Italian origin and of comparable nature. A copy of this bill of entry was not made available to the appellants. Without getting its copy, they could not make an effective representation either. Even though in the letter dated 11.1.1999, they had dispensed with their right of personal hearing, Responsibility on the part of the adjudicating officer to supply the basic documents to the appellant cannot be dispensed of. Had they been told that action was being taken on account of the value shown in the Bill of Entry No. 115367, they would have raised the contention that the goods imported therein are not of comparable nature with the goods imported by them. Viewed in this light we feel that the adjudicating authority passed the imported order without complying with the principles of natural justice. Even the Ld. Departmental Representative who tried to defend the impugned order is not having the copy of the bill of entry on the basis of which the impugned order was made. One is to search in vein the impugned order to see whether the goods covered by that Bill of Entry was of comparable nature with the goods imported. The mere fact that appellants waived the right of show cause notice and personal hearings cannot be ground to ignore the principles of natural justice, while passing the adjudication order. On the facts and circumstances of this case, we are clear that appellants wrote a letter dated 11.1.1999 under duress on account of---to pay 5. We are clear in our mind that the impugned order was passed by the authorities in violation of the principles of

natural justice.

Therefore we set aside the order and remand the matter to the adjudicating authority for de novo disposal. We make it clear that documents relied on by the department to enhance the value of the goods imported must be made available to the appellants and they must be given a reasonable opportunity of being heard. Appeal is disposed of in the above terms.