

**Chandra Enterprises and anr. Vs. Cc**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Sep-02-1999

**Reported in :** (2000)(90)LC306Tri(Delhi)

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

**Appellant :** Chandra Enterprises and anr.

**Respondent :** Cc

**Judgement :**

1. Issues raised in these appeals are virtually identical, though appellants are different. Arguments on behalf of the appellants are identical. So, we consider it advantageous to dispose of them by this common order.

2. Appellants imported "Heavy Melting Scrap". The consignment in relation to appeal No. C/187/99-A was 19.17 metric tonnes valued at US \$ 2587.95 covered by invoice No. BFS002 dated 29.5.1998. The goods covered in appeal C/188/99-A were 11.690 metric tonnes valued US \$ 2400.99 covered by invoice No. BFS001 dated 23.5.1998. On the import of the above mentioned goods, the importers paid duty on the declared value. On examination by the Customs authorities, it was revealed that in the first case there were 30 diesel engines of Nissan brand and 6 of Toyota brand. In the second case, there were 40 diesel engines of Nissan brand. On detecting the existence of these types of machines, notices were issued calling upon the importers to show cause why the value of the diesel engines should not be separately fixed, why they should not be confiscated under Section

111(d) and (m) of the Customs Act, 1962 and why penalty should not be imposed under Section 112(a) and Section 114A of the Customs Act, 1962. The notices further required the importers to show cause why the "Heavy Melting Scrap" imported along with the machines should not be confiscated under Section 119 of the Customs Act. In reply to the show cause notices, detail objections were filed by the importers. They were afforded personal hearing as well. After considering all their contentions, the adjudicating authority passed the following order in the first case: 28. The CIF value of the imported second hand diesel engines, classifiable under sub-heading 8408.20 of the Customs Tariff, is fixed at Rs. 8846.53 per piece.

29. The used diesel engines imported vide B/E No. 000069 dated 4.7.1998 and having CIF value of Rs. 3,18,475.00 are hereby confiscated under Section 111(d) and 111(m) of the Customs Act, 1962.

30. The HM scrap having CIF value of Rs. 85,495.00 are confiscated Under Section 119 of the Customs Act, 1962.

31. The used diesel engines as well as the HM scrap are allowed to be redeemed on payment of a total fine of Rs. 5,00,000/- (Rupees five lakhs only).

32. I also impose a penalty of Rs. 90,000.00 (Rupees ninety thousand only) on the importers under Section 112(a) of the Act *ibid*.

In the second case, the order of the adjudicating authority was to the following effect: 29. The CIF value of the imported second hand diesel engines is fixed at Rs. 8846.53 per piece.

30. The used diesel engines imported vide B/E No. 000070 dated 4.7.1998 and having CIF value of Rs. 3,53,861.00 are hereby confiscated under Section 111(d) and 111(m) of the Customs Act, 1962.

31. The HM scrap having CIF value of Rs. 74,610.00 are confiscated under Section 119 of the Customs Act, 1962.

32. The used diesel engines as well as the HM scrap are allowed to be redeemed on payment of a total fine of Rs. 5,50,000.00 (Rupees five lakhs and fifty thousand only).

33. I impose a penalty of Rs. 1,00,000.00 (Rupees one lakh only) on the importers under Section 112(a) of the Act *ibid*.

The above mentioned orders were challenged before the Commissioner (Appeals). In the first case, redemption fine was reduced to Rs. 2,50,000 and penalty to Rs. 40,000.00. In the second case, redemption fine was reduced to Rs. 2,70,000.00 and penalty to Rs. 50,000.00. These orders passed by the Commissioner of Customs (Appeals) are under challenge in these appeals.

3. It is not disputed that the goods were described as "Heavy Melting Scrap" in the invoice and the Bill of Entry. Diesel engines of Nissan make and Toyota make were found in the scrap. On account of the misdescription and under-valuation, proceedings were initiated against the importers.

4. Learned Counsel representing the appellants argued that the adjudicating authority and the Commissioner (Appeals) were not justified in rejecting the valuation report submitted by the Chartered Engineer who was deputed to value the machines at the instance of the department. The valuation report of the Chartered Engineer shows that the value of these engines comes to Rs. 4200.00 each. Duty should have been levied only on that value. It is his argument that authorities below were not justified in rejecting the valuation report submitted by the Engineer deputed by them. It is common knowledge that a car engine has got its own independent existence, independent of gear box and dynamo. So, in assessing the value of the engine, value of the gear box is an irrelevant matter. The Chartered Engineer in his report proceeds on the basis that the gear box is an integral part of the car engine and in finding out the value of the engine, the price of gear box has to be deducted. This is a fundamental error committed by him. In his report for arriving at the value of the engine at Rs. 4200.00, the method used by him is as follows: (c) Thereafter, he deducts cost of gear box and self to an extent of 35%.

(d) Another amount of Rs. 10,000.00 is deducted as the cost of rebuilding the engine.

(e) Then cost of warehousing, freight and octroi amounting to Rs. 500.00.

(g) It is after deducting the above mentioned amounts, he arrived at the value at Rs. 4200.00.

As a Chartered Engineer he was expected to find out the value of each engine imported. He has not attempted to find out the value of the imported engine. He had not even inspected each engine. Even from his report it is seen that all the engines imported were not of the same type or were having the same defects or of the same model. So, each engine will have its own separate value. In such a situation, he was clearly in error in finding out the value of the engine at Rs. 4200.00.

So, the authorities below were justified in ignoring the value given by the Engineer. His report is not of any assistance in finding out the value of the goods imported.

5. Learned Counsel then advanced an argument that without gear box the engine is not of any worth as against the contrary stand taken by the authorities. We do not find any merit in this contention and we are not in a position to accept this argument. Even without gear box the engine can have its own independent existence. Similarly, alternator and dynamo are only accessories to the engine. In the absence of these accessories also, the engine will continue to be engine. The value of such an engine has now been fixed by the authorities below with the materials available in the case. We do not find any ground to interfere with the conclusions reached by the authorities. According to us, the Appellate Commissioner has shown the maximum leniency to the importers by reducing the redemption fine and penalty. No further indulgence is called for.

6. The appeals are devoid of any substance. They are accordingly dismissed.

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