Deepak Electronics (Bom.) Pvt. Vs. Commr. of Customs

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SooperKanoon Citation : sooperkanoon.com/16761

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-15-1999

Reported in : (2000)LC447Tri(Mum.)bai

Appellant : Deepak Electronics (Bom.) Pvt.

Respondent : Commr. of Customs

Judgement :
1. The question of consideration in this appeal is the assessable value of a consignment of the video magnetic tapes imported by the appellant in October, 1991 from a supplier from Hong Kong. In the order impugned in this appeal the Collector has not accepted the value claimed of Hong Kong $ 500 per roll of 10000 ft. CIF declared by the importer. He has held that M/s. Hariram Govindram & Sons, another importer imported identical goods from the same supplier at Hong Kong had supplied at Hong Kong $ 1050 per roll of 10000 ft. and held, that value applicable the appellant's import. He has ordered confiscation of the goods under Clause (m) of Section 111 of the Act with an option to redeem them on payment of fine of Rs. 50,000/- and imposed penalty under Section 112, of Rs. 20,000/- on the importer, and Rs. 10,000/- on Pramod Kumar Agarwal (appellant in Appeal E/397/93-A) a Director.

3. The contention that goods by Hariram Govindram & Sons were not comparable goods on account of the larger weight of the consignment which sought to be raised before us had already been raised and considered in the appellant's own case. In its Order-in-Appeals C/351/92 and C/485/92-A filed by M/s. Deepak

Electronics Limited and Pramod Kumar Agarwal, the Tribunal considered this ground, but it declined to accept it for the reasons given therein. In that case too the Tribunal applied to the imports made by the appellant in July, 1991 the price of Rs. 1,050/- per roll of 10000 ft. at which M/s. Hariram Govindram & Sons had imported. The other contention is that, whereas the last importation made by Hariram Govindram & Sons was in July, 1991 the appellant's import was in October, 1991 and that these two imports were not contemporaneous. We are unable to agree. An interval of three months between importation sought to be compared and the importation under consideration, is not itself, sufficient to rule out the applicability of the prices at which the earlier importation was made.

Whether an importation is contemporaneous with another with which it is sought to be compared is cannot be answered with a 'yes' or a 'no'.

Prices of goods fluctuate depending upon number of factors. These factors have to be taken into account before deciding that a particular importation is contemporaneous (or not) with another. In the case before us there is nothing to show that video cassette tapes were subject to frequent fluctuations of the prices, such as in the case with agricultural commodities. Further there is an absence of factors to show that there could have been alteration in prices between July and October, 1991. On the other hand as the Collector points out, the market prices for this product appears to have been relatively stable.

The prices at which M/s. Hariram Govindram & Sons imported the goods in July, 1991 was the same as the one at which that buyer imported them on various occasions between July, 1991 and February, 1992. In the absence of anything to the contrary it is therefore reasonable to conclude that the same prices hold three months after July, 1991 when the appellants goods (sic) the goods.

4. We, therefore, find no reason to interfere with the impugned order.

We also note, having regard to their relative quantum, thus the redemption fine and penalties are not unreasonable. Both appeals dismissed.