Mask Enterprises Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-09-1999

Reported in : (2000)(117)ELT172Tri(Mum.)bai

Appellant : Mask Enterprises

Respondent : Commissioner of Customs

Judgement :

1. The dispute in this appeal relates to valuation of ball bearings imported by the appellants. These ball bearings were of various specifications and of various origins. A few were manufactured by SKF.The lot also included bearings of Japanese origin. The SKF bearings also were manufactured in three different countries. In addition there were bearings manufactured by different manufacturers in Czechoslovakia, Russia and Rumania. The total value of the goods was declared at US$ 9248.55. The show cause notice alleged that the fair value was US$ 20,189.87 placing reliance on extracts of price lists annexed thereto. Before the Commissioner it was claimed that similar brands were being imported and were being cleared at Mumbai at rates declared as in this case. It was claimed that the local prices of these goods would show that the declared prices were correct. It was claimed that for certain specifications where the price was shown in some other currency the value adopted was in dollars. It was claimed that the price list showed a much higher value for goods of the same specifications whereas the goods imported were of very cheap qualities.

The Commissioner of Customs, Kandla in his adjudication order observed that the price list relied upon by the department showed prices of bearings of SKF and ZKL makes. He also held that although the prices of the imported brands were not available, on identical specifications he was arriving at the value from the price list. He denied the suggestion that there would be significant differences between the prices of bearings manufactured by two manufacturers. He observed that the prices quoted would not be sufficient to cover even the cost of the raw materials. He stated that since the invoice price was not acceptable, he was taking recourse to the Customs Valuation Rules. In doing so he relied upon the Supreme Court judgment in the case of Sharp Business Machines. Pvt. Ltd., 1992 (60) E.L.T. 620 (the judgment relied upon by the learned Commissioner is actually a Tribunal judgment in the case of Pradeep Kedia which followed the cited judgment of the Supreme Court).

On his having confirmed the demand of higher duty on revaluation, the present appeal before us.

2. Shri Anil Balani, learned Counsel relies upon the following judgments :Mirah Exports Pvt.Ltd. v. C.C.E., 6. Sawhney Export House (P) Ltd. v. C.C., 1992 (60) E.L.T. 327 (Tribunal) 7. Vellore Roller Flour Mills Pvt. Ltd. v. C.C., 1991 (56) E.L.T. 659 (Tribunal).

4. We have carefully considered the submissions, seen the annexure to the show cause notice and perused the price lists.

5. In terms of the Valuation Rules, the transaction value as indicated by the invoice is to be accepted for the purpose of assessment. Where the transaction value is found not acceptable then the transaction value of similar goods is to be adopted after making necessary adjustments. In examining the applicability of the transaction value or value for identical goods, the department has to take cognizance of evidence available indicating the prices at which identical goods are imported. In doing so the points to be taken into account are that the present import and the comparable imports should be proximate in time, should be from the same source and should be similar in quantum imported. If the price cannot be determined following these processes, then the best judgment in terms of Rule 8

has to be adopted keeping in mind the methodology of the earlier rules.

6. In the present case the learned Commissioner made the observation that identical goods were not imported at all. It is difficult to believe this statement since ball bearings have been staple imports for decades.

7. Reliance can be placed for determination of valuation on price lists issued by the manufacturer of the goods. In the present case the price lists issued by SKF and ZKL were relied upon to determine the prices of goods imported from other sources also. It is common knowledge that prices of bearings even of similar specifications vary widely from manufacturer to manufacturer.

8. We have also seen the price lists on which reliance had been placed.

The show cause notice described them as international price list. The price lists are in form of voluminous statements. The first page shows "GPZ". The learned Counsel informs us that this is a Russian brand figuring in the list of two of the varieties. But in his order the Commissioner does not refer to this price list although relied upon.

Shri Balani suggests the reason to be that if this list is followed, some of the prices quoted by him could be higher than the prices quoted in the price lists. The other price lists show values in US dollars.

None of the citations indicates the source. Although some price lists show the year, most of them do not show the time-frame for which these price lists would apply. The country in which these goods were manufactured are also not apparent on the face of the price list. Some rates are quoted without showing the identity of the person quoting the rates. The quotation does not show the manufacturer's name. No reference is made in the Commissioner's order to these quotations.

9. On perusal we find that the evidence, given if the show cause notice for sustaining the prices determined by the department, does not serve the purpose at all.

10. The Supreme Court in the cited judgment in the case of Mirah Exports Pvt. Ltd. held that at all times the burden to prove undervaluation was on the Customs. In this case it is clear that the burden has not been discharged. Even if the price lists were to bear the name of the issuing authority, for sustaining the enhancement it had to be shown that goods had been imported at those prices by the other importers. This was the ratio of the cited judgment in the case of Kishandas & Sons. The Tribunal in the cited case of United Traders (India) had held that unsigned quotations could not form the basis of transmit. In the Sawhney Export House (P) Ltd. case the responsibility to show undervaluation was placed on Customs by showing evidence of import of identical goods at higher prices. This burden was avoided by the learned Commissioner by holding that there was no import of ball bearings of comparative qualities. In the Vellore Roller Flour Mills Pvt. Ltd. case the Tribunal had placed the burden on the revenue for proving undervaluation even where the prices quoted were less than the prices quoted in the price list.

11. In the Sharp Business Machines Pvt.Ltd. case the Supreme Court were dealing in the case where the quotations from the same supplier were higher than the invoice given by the same supplier. In the cited case of the Tribunal in the case of Pradeep Kedia which followed this judgment the price list was from the very manufacturer proximate to the imports. The ratio of neither of the judgments applies to this case.

12. We find in the present case the evidence tendered by the department to establish undervaluation was not sufficient cause that the Collector was wrong in holding that there were no contemporaneous imports. We find that the Revenue has failed to discharge the burden placed upon them. We accordingly allow the appeal with consequential relief.