Asha Printery Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-17-1999

Reported in : (2000)(116)ELT474TriDel

Appellant : Asha Printery

Respondent : Commissioner of Customs

Judgement :

1. Appellant purchased one unit of Adast Dominant 745 -Four Colour Offset Printing Machine through M/s. J. Mahabeer & Co. Pvt. Ltd. from a foreign manufacturer. Value of that machine was fixed at Rs. 8,51,400.00 on import documents. As per the contract entered into between the appellant and M/s. J. Mahabeer & Co. Pvt. Ltd., a sum of Rs. 43,000.00 was also payable by the appellant to M/s. J. Mahabeer & Co. Pvt. Ltd. This amount was described in the contract as fee for technical advice to be given by M/s. J. Mahabeer & Co. Pvt. Ltd. The printing machine was imported pursuant to that agreement. It was provisionally assessed to duty and clearance was effected. Thereafter, it was noticed by the department that over and above the amount mentioned in the invoice, commission was payable by the appellant purchaser to M/s. J. Mahabeer & Co. Ltd. The amount so payable and actually paid was to be included in the price of the machine and duty realised accordingly. In this view, show cause notice was issued requiring the appellant to state why the commission payable to M/s. J.Mahabeer & Co. should not be added to the value of the imported printing machine and duty realised. Appellant contested the claim stated in the show cause

notice. Adjudicating authority rejected all those contentions and by Order-in-Original No. SSG-INF-93/AJ/89 SUB (Pt. 9), dated 11-3-1991 confirmed the demand and directed the appellant to pay Rs. 77,981.00 as differential duty. This order is under challenge.

2. Learned Counsel representing the appellant raised three contentions for our consideration. The first point v/as that show cause notice issued was barred by limitation and so the Order-in-Original passed by the Collector is unsustainable. The second contention was that the appellant did not pay any amount by way of commission and that the amount of Rs. 43,000.00 was paid to M/s. J. Mahabeer & Co. for the technical advice rendered by them. So, no duty can be imposed on the amount paid towards charges, i.e. technical advice given by M/s. J.Mahabeer & Co. The third ground that was raised is that even conceding for argument sake that amount of Rs. 43,000.00 was paid to M/s. J.Mahabeer & Co. as commission, the Collector was not justified in demanding differential duty on 20% of the price. We shall proceed to deal with these arguments hereinbelow.

3. We heard learned Counsel representing the appellant and learned D.R.in extenso.

4. Bill of Entry was filed on 27-1-1986 for clearing the printing machine imported. On the said Bill of Entry a provisional assessment alone was made. Duty thus assessed on provisional basis was paid by the appellant herein and got the machine cleared. Thereafter, some time in March 1989, assessment was finalised. We presume that the final order was passed in March 1989 only on the basis of the statement to that effect contained in the impugned order. Learned Counsel representing the appellant was not in a position to show when the final order of assessment was received by him from the department. Pursuant to that final order of assessment, learned Counsel representing the appellant concedes that a sum of Rs. 19,000.00 and odd was deposited. The date on which the said deposit was made is not known to the counsel. Without knowing the date of deposit, we are not in a position to hold that the show cause notice issued on 13-12-1990 is beyond the time fixed by Section 28 of the Customs Act, 1962. Section 28(3) (b) of the Act says that in case where duty is provisionally assessed, the date of adjustment of

duty after final assessment should decide the starting point of limitation. Unless one knows the date on which the duty was paid pursuant to the final order of assessment, one will not be in a position to decide when the limitation prescribed in Section 28 of the Act started to run. When confronted with this difficulty, learned Counsel rightly and fairly conceded that he is not pressing the point of limitation before us. In this circumstance, the plea of limitation urged on behalf of the appellant has only to be rejected and we do so.

5. Next contention raised by the learned Counsel representing the appellant is that amount of Rs. 43,000.00 was paid as charges towards technical advice and not as commission. What type of technical advice which he received from M/s. J. Mahabeer & Co. is not discernible from any of the records now placed before us. So on going through the contract entered into between the appellant and M/s. J. Mahabeer & Co., it is clear that a sum of Rs. 43,000.00 was paid to M/s. J. Mahabeer & Co. towards extra consideration for getting the machine. That extra consideration should go in to argument the value of the machine.

Therefore, that must be treated as part of the purchase price. Duty is payable on Rs. 43,000.00.

6. The third contention raised by the learned Counsel is that the Collector in the impugned order was not justified in imposing duty on 20% of the value of the machine as commission payable to M/s. J.Mahabeer & Co. Duty on 20% of the value has been demanded as differential duty. Collector in the impugned order refers to other imports which were adjudicated upon by him. In those cases, he demanded differential duty on 20% of the CIF value. The imposition of such differential duty can only be on the basis of the terms of the contract under which those printing machines were imported. In the instant case the contract entered into between the appellant and M/s. J. Mahabeer & Co., the Indian agent of the foreign manufacturer, showed the payment of Rs. 43,000.00 only to M/s. J. Mahabeer & Co. Pvt. Ltd. Nothing more than Rs. 43,000.00 is seen to have been paid pursuant to that agreement. In the impugned order no circumstance or document has been relied upon by the Collector to show that the appellant did pay anything more than Rs. 43,000.00 to M/s. J. Mahabeer & Co. for getting the

machine imported. In such a situation, we are clear in our mind that the Collector was not justified in directing the appellant to pay differential duty on 20% of the CIF value of the machine. Collector could have imposed differential duty on Rs. 43,000.00 which was paid by the appellant to M/s. J. Mahabeer & Co. Pvt. Ltd. In this regard, the order requires modification.

7. In view of what has been stated above, we uphold the order of the Collector imposing additional duty of Rs. 43,000.00 and not on 20% of the CIF value. Subject to this modification, the order passed by the Collector is confirmed. Appeal is disposed of in the above terms.