

Cc Vs. J.K. Industries Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-24-2000

Reported in : (2000)(93)LC361Tri(Mum.)bai

Judge : S T Gowri, J S Murthy

Appellant : Cc

Respondent : J.K. Industries Ltd.

Judgement :

1. The question for consideration in this appeal by the department is the value for assessing to duty of the secondhand moulds for tyres imported by the respondent. The moulds were supplied free of charge to the importer by the foreign supplier, to whom the importer was to export tyres made by using such moulds. Value for customs purpose had been declared to be US \$ 5900.00. The appraiser of Customs opined that the value ought to be double of the amount and sent this recommendation to the appraising group. The appraising group did not accept this view.

It arrived at the assessable value by depreciating 48% on the value equivalent to new moulds declared by the Chartered Engineer, who inspected the imported goods, to be US \$ 49,000.00. The value so arrived at was US \$ 25,480.00 CF. The importer questioned this value to the Collector (Appeals). The Collector (Appeals) stated that the cost of new goods given by the Chartered Engineer was notional and that depreciation given to this "retrospective value" was

unacceptable. He said that it is contrary to the principles of the Valuation Rules. The Rules 5, 6 and 7 had not been eliminated by the shed appraiser who had straightaway valued the goods under Rules 8. He therefore said that the value adopted should be the one, which the shed appraiser recommended.

3. We accept that there is no basis shown in the invoice for declaring the value of the goods at US \$ 5900.00. The supplier was a trader and not a manufacturer of moulds. The goods were supplied free of charge.

The basis by which the value declared in the invoice was arrived has not been shown. There is, therefore justification for not accepting the transaction value. The basis on which the shed appraiser increased the value of the moulds by 100% is also not known. It is not contended that he was an expert appraiser of second-hand machines or equipment. We are also unable to accept the contention that the value given by the Chartered Engineer's certificate, from which the value has been arrived at, is that of new moulds at a time when the goods under consideration was manufactured in 1989. A plain reading of that document indicates that it is the value of the new machinery on or about the date that the engineer issued the certificate, that he has given.

4. Obviously Rules 5, 6 and 7 of the Valuation Rules will not apply.

These are moulds and second-hand moulds and it is well settled that it (is) improbable to compare value of second-hand machines of equipment to another unless it is shown that the condition of the machine, manufacturer and extent of use, condition of the machine of the two sets of the goods are identical. It would be extremely difficult to find such machines or mould, which could be compared with. The best Judgment is therefore possible. We are, therefore, of the view the best way to arrive at the value would be to ascertain the cost of new moulds when they were manufactured in 1988 and derive the value by giving appropriate depreciation at the rate, which has been given. We have been assured by Mr. N.G. Nileshwar, representative of the importer that the company will make efforts so as to make such value available and pass it to the Customs department. We however, caution that the department should not depend only on the importer but it should make its own effort to get such value. Thereafter the matter should be

decided in accordance with law by the Assistant Commissioner.

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