System Dynamic Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-09-2000

Reported in : (2000)(119)ELT351TriDel

Appellant : System Dynamic

Respondent : Collector of Customs

Judgement :

1. The case relates to import of 25 pieces of Colour Graphic Terminals along with Base Station. The goods were declared in the Bill of Entry as Colour Graphic Terminal only. Based on information, the customs authorities examined the consignment and found that in addition to the declared colour graphic terminals, the consignment contained base station and hard disc also. Accordingly, proceedings were initiated for confiscation of the goods under Section 111(d) and (m) of the Customs Act read with Section 3(2) of the Import and Export Control Act, 1947.

2. During proceedings the appellants admitted that in previous cases also, that is, Bills of Entry Nos. 09590 dated 28-12-1991,11246 dated 30-3-1992, 742 dated 5-7-1992 and 1035 dated 8-7-1992, the same modus operandi had been adopted by the appellant to clear the excess goods by misdeclarihg the description and value of the consignment under import.

Upon this finding, the Additional Collector vide impugned order confiscated the goods with an option to redeem them on payment of fine of Rs. 6.5 lacs. Further, duty was demanded at the full value of the consignment and penalty of Rs. 2 lacs was also imposed on the appellant.

3. The explanation offered by the appellant in the present appeal is that foreign supplier had included Hard Disc Drive and Base Station by mistake. Therefore, there was no mis-declaration of value or non-inclusion of the goods or attempt at evasion of duty by the appellant. The submission is that appellant was only declaring in the Bill of Entry the same particulars as conveyed to him in the invoice of the supplier.

4. Appellant has not appeared for personal hearing but had sent a letter dated 10-12-1999 containing their submission.

5. Learned DR has explained that this is a case of repeat offence by he appellant. Only a part of the goods imported had been declared.

Therefore mis-declaration of description and value are both involved.

Attempt to evade duty is clear from the fact that the appellant had earlier also cleared a few consignments misdeclaring them in the present manner. He therefore submits that there is no merit in the contention raised in the appeal. He also submits that in the overall facts and circumstances the redemption fine and penalty cannot also be treated as unmerited, or excessive.

6. Appellant had resorted to the same method of mis-declaration of goods earlier also and had admitted the same in the proceedings.

Appellant's explanation that by mistake, extra goods came to be despatched by the supplier is hard to believe. If that had been the case, the foreign supplier would either have sought return of the excess goods or payment for the same. That has not happened in the present case. In that situation, the misdeclaration has to be held as deliberate. The repeat performance of the same act also shows, clear intention to evade duty. We, therefore, find no merit in the appeal.

The redemption fine and penalty imposed are not disproportionate.