

Commissioner of Customs Vs. Auto World

Commissioner of Customs Vs. Auto World

SooperKanoon Citation : sooperkanoon.com/18700

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-18-2000

Reported in : (2000)(122)ELT500Tri(Mum.)bai

Appellant : Commissioner of Customs

Respondent : Auto World

Judgement :

1. By the Order-in-Appeal dated 29.04.1999, the Commissioner of Customs (Appeals), Mumbai disposed of 16 appeals filed before him by importers of second hand diesel engines challenging the orders of the lower authorities as to the quantum of fines and penalties. 16 appeals have been filed by the Revenue against this combined order. Another Commissioner of Customs (Appeals) by his order dated 29.09.1999 disposed of 5 appeals filed before him by traders placed in similar circumstances. The Revenue have filed 5 appeals against this combined order. Since these two sets of appeals involve the same issue, we are taking up all these appeals together for disposal after hearing Shri Deepak Kumar for the Revenue and Dr. S.N. Kantawala, advocate for the respondents.

2. In disposing of the 16 appeals before him, the Commissioner of Customs (Appeals) had placed reliance on the findings of the Tribunal as to the leviable quantum of fines and penalties attracted by similar engines. The Commissioner (Appeals) adopted the ratio or the judgments.

He further observed that in two earlier orders, the Commissioner of Customs (Appeals) had adopted the ratio of the judgments of the Tribunal. Applying the ratio of the judgments of the Tribunal, the Commissioner (Appeals) reduced the fines and penalties giving rise to the first batch of appeals before us.

3. Shri Deepak Kumar contended that those judgments would not make for the determination of the quantum of fine and penalty. The value in turn would be determined by the condition of the goods. It was his submission that in those cases, the valuation would necessarily depend upon the condition of the individual imported lot and as such valuation could not be standardised. We find that where the goods of a particular class are ordinarily imported, the customers come to expect a certain level of excellence or utility in those goods and the importers/sellers would fulfil the quality expectation of the buyers. Where the goods are better than the expectation of the buyers, the buyer would benefit and where the goods were not up to his expectation, the buyer would not accept them. The second point made by Shri Deepak Kumar was that by virtue of the importers having signed the examination report it should be presumed that they had accepted the finding of the Appraisers as to the valuation also. We find this argument hard to accept. The signatures of the importers on the examination report would not amount to unconditional acceptance of the value. The third contention of Shri Deepak Kumar was that the engines are of different makes and therefore, a single valuation would not be possible. We feel that the analysis made by us in regard to the first observation would adequately cover this point also. The next point raised by Shri Deepak Kumar was that the period relating to the present imports and those covered by the cited judgments of the Tribunal would be different. We find that the period covered in the case of M/s. Ar-chana International (Order No.3820/97 WZB, dated 22.09.1997) in Appeal No. C. 667/97-BOM. was ranging from October, 1997 to July, 1998. Therefore, the elements making for the determination of the quantum of fine as held in the cited judgment would apply.

4. Shri Deepak Kumar seeks to draw strength from paragraph 11 of the cited judgments of the Pioneer International (Order Nos.

3680-3681/98/WZB C.I., dated 29.09.1998) [1999 (107) E.L.T. 476 (T)].

In paragraph 1 of the order, the Tribunal had given caution that the various factors prescribed in Sec. 125 would keep changing from time to time and therefore, it would be inappropriate to adopt a particular percentage. He seeks to apply this ratio to state that the Commissioner could not have adopted the determined percentages from other cited cases. As the last line of this paragraph would indicate generally where the period between the two imports is the same, it could be safely presumed that the parameters would not be changed.

5. The common ratio of the judgments of the Tribunal on which reliance was placed by this Commissioner brings out the fact that in a short span of time, the market value of similar goods would not differ and therefore the quantum of price should not also be varied. The Commissioner in his order has cited two other orders, in which the quantum of fines upheld was the same which he upheld in the later date.

To a specific query, whether the department had accepted this judgment, Shri Deepak Kumar did not have any relevant information. However, Shri Kantawala placed before us certain notes from the Custom House files in which Order-in-Appeal Nos. 228-235 MCH, dated 26.04.99 passed by the Commissioner of Customs (Appeals) was accepted by the jurisdictional Commissioner. This acceptance came on the belief that the judgment of the Archana International had been accepted by the department. We find that the quantum of fine determined by the Commissioner in this batch of appeals is the same as has been stated before us by the Commissioner in the present appeals.

6. We now come to the submissions made in the memorandum of appeals on which Shri Deepak Kumar had argued at length. It gives the arithmetical formula for determining the margin of profit which we find of no significance. The judgment of the Supreme Court in the case of South India Coir Mills (AIR 1976 SC 1527) is also cited in the appeal memorandum. It is the Appellant Commissioner's belief that this judgment lays down the law that it is not necessary that the reasons for arriving at a particular quantum of fine should be given in each case. On perusal we do not find any such law to come out of this judgment. The memorandum also refers to the Supreme Court judgment in the case of M/s. Jain Exports [1993 (66)

E.L.T. 537 (S.C.)] and states that the quantum of fine should be fixed on the totality of all facts and the circumstances of each case. There could be no hesitation in adopting this principle laid down by the Supreme Court. But it is not shown by the Commissioner as to in which manner has the Commissioner (Appeals) departed from the ratio of this judgment.

7. On examination of the memorandum of appeals and various submissions made by both the sides, we find that the orders made by the Commissioner (Appeals) admittedly followed the judgments given by the Tribunal which judgments had already met with approval and acceptance by the department.

8. We now come to the next batch of 5 appeals. It is correct as stated by Shri Deepak Kumar that the discussions are not as detailed as in the first batch of appeals but it is apparent that the time frame is the same. In the grounds of appeals, similar arguments were advanced. The oral submissions made by Shri Deepak Kumar are relevant for determination of the points arising out of this batch of appeals also.

On the basis of the discussions made by us above in dealing with the first batch of 16 appeals, we find no reason to interfere with the orders of the Commissioner (Appeals) in this batch of appeals either.

9. In the result, the impugned orders are upheld. The appeals from the Revenue are dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com