Samrat Enterprises Vs. Commissioner of Customs (import)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-11-2000

Reported in : (2000)(122)ELT423TriDel

Appellant : Samrat Enterprises

Respondent : Commissioner of Customs (import)

Judgement :

1. Both these appeals are by M/s. Samrat Enterprises, Delhi a proprietary concern of which Shri Inderpal Singh is the proprietor. The issue involved in both the appeals is also the same the valuation of certain electronic parts imported by the appellant at Bombay Port.

Accordingly, they were taken up together for hearing and are being disposed of by this common order.

2. The dispute in Appeal No. C/9/2000-A is with regard to the import of a consignment of 'electrolytic capacitors'. The appellant sought clearance of the goods under Bill of Entry No. 10907 dated 27.01.1999.

The goods were declared in the bill of entry as "Electronic Components - Electrolytic Capacitor (other than paper or power capacitors)". The value of the consignment was declared as HK $20856.85 (Rs. 1,15,860).

The consignment comprised 8,30,404 pieces of capacitors. The consignment was supplied from Hong Kong and the country of origin of the goods was declared as

China.

3. On suspicion of under invoicing and on the basis of prices observed in respect of contemporary imports of certain specified descriptions of electrolytic capacitors by other importers, the case was taken up for detailed investigation by the Customs authorities. Examination of the goods showed that they were electrolytic capacitors of various specifications and each capacitor was found to be having 'Samsung' trademark and the specifications in microfarads (UF) volts (V) were mentioned on the body of the capacitor. The consignment included 102 different types of specifications. Comparison of the declared value with the contemporaneously imported items indicated with the declared value for the imported goods was much less than the value of the comparable goods. The marking "Samsung Korea" showed that the goods were of Korean origin while they had been declared in the bill of entry as of Chinese origin. Market enquiries also showed that the declared value is almost one seventh of the actual CIF value. Shri Inderpal Singh in his statement admitted that the goods were of Korean origin though they were declared as of Chinese origin. Based on above evidence; show cause notice dated 09.08.1999 was issued asking the appellants to explain why the transaction value should not be rejected for the purpose of valuation of the goods and why the goods should not be assessed at higher value of Rs. 8,09,998/- and differential duty of Rs. 3,29,716/- recovered. Confiscation of the goods under Section 111(m) of the Customs Act and imposition of penalty under Sections 112(a) and 114A were also proposed. The appellants submitted in their reply that the consignment in question was produced as a stock lot and that the transaction value has been correctly stated in the invoice and that the goods should be assessed at the transaction value. They also refuted the allegation of misdeclaration. The case was adjudicated by the Commissioner confirming additional duty demand of Rs. 3,29,716/-.

Penalties of Rs. 2 lakhs were imposed under Section 112(a) on M/s.

Samrat Enterprises and Rs. 50,000/- on Shri Inderpal Singh. The appeals challenge the enhanced duty demand and imposition of penalties.

4. The dispute in Appeal No. C/8/2000-A relates to import of 'electrolytic capacitors' and ICs. In Bill of Entry No. 10915 dated 27.01.1999 the goods were declared to be "Electronic Components: 81,770,305 PCS - Electrolytic Capacitor (other than paper or power capacitors) and 36000 PCS. - ICs "and declared collective value as CIF Hongkong $1,33,420.00 in terms of Invoice No. SI-9810308, dated 22-12-1998 issued by M/s. Reflex International Hongkong and the country of origin as China. On suspicion that the goods had been undervalued they were subjected to full examination. It was revealed that the consignment consisted of 167 cartons, of which carton Nos. from 1 to 164 contained Electrolytic Capacitors and carton Nos. from 165 to 167 contained Integrated Circuits (ICs). The ICs contained the marking "TA 8637 Toshiba Japan" both on the ICs themselves and on the cartons.

Cartons 159 to 164 which contained electrolytic capacitors bore the marking "Eurocap (Far East) Ltd.". The other cartons contained Electrolytic Capacitors of the brands Elna, Ruby-con, NCK, Capxon, Maxcon, LLC-GS, K.D., SXE, SME, Rocon, Shdei, W and KMG. The capacitors were of 776 different types of specifications in Microfrads (UF of MFD) volts (v). In the import documents the capacitors had been declared as of Chinese origin. However, during the investigation the appellant produced a certificate of origin showing the country of origin as Japan. Investigations also showed that 52 out of 76 varieties of the capacitors were being contemporaneously imported and their value was about 4.69 times the declared value of over Rs. 5.5 Lakhs. In view of the misdeclaration of value of the goods, the Customs Authorities felt that, the remaining 24 items of capacitors also should be treated as undervalued and their value also increased by 4.69 times. With regard to the ICs, it was observed that their quoted price was much higher at 6.25 times the declared value, as against the declared price of Rs. 1,10,880, the quoted price was Rs. 69,326.76. The Customs Authorities were of the opinion that the ICs must be assessed at the value contained in the quotation and differential duty on account of adopting that value worked out to Rs. 1,89,181/-. In view of the Misdeclaration of country of origin and value of the goods, show cause notice was issued to the appellant proposing to increase the assessable value involving a differential duty demand of Rs. 12,92,570/-. The show cause notice also proposed confiscation of the goods and imposition of penalty on the importers. The appellants contested the notice, holding that confiscation and penalty were not involved, as there was no misdeclaration.

5. The Commissioner rejected the appellants' explanations and passed the Order No. CAO/No. 478-99/CAC/CC-KPS, dated 18-10-1999 upholding the charges. However, some discounts and deductions were allowed and the value was fixed at Rs. 24,18,223/-. At this value, differential duty of Rs. 7,47, 001/- was confirmed. The Commissioner held the goods to be liable to confiscation under Section 111(m) of the Customs Act.

However, an option to redeem the same on a payment of Rs. 2 Lakhs was offered. A penalty of Rs. 75,000/- was also imposed on Shri Inderpal Singh under Section 112 (a) of the Customs Act. Appeal No. C/8/2000-A is against this order.

6. The contention of the appellants in the appeal is that the consignments were stock lots of varieties of capacitors and that they were goods of several country origin like Korea; Taiwan and China. With regard to the valuation, it has been submitted that the department has ascertained comparable value only in respect of some varieties and in respect of the remaining items there was no import of comparable goods.

In regard to these items, enhancement of value has been done on a pro-rata basis depending upon the under valuation in respect of other items with comparable prices. Thearned counsel for the appellants emphasised that there is no provision in the Customs Valuation Rules to enhance value of imported goods on a pro-rata basis. With regard to the items for which comparable values have been taken, it was submitted that the comparison of the value has not been correctly done. The contention with regard to these items is that the price has been compared with the price of capacitors of very established brand name and which were identifiable parts of various electronic machines, while capacitors imported by the appellants were not any particular parts of identified electronic goods. It has also been submitted that in the absence of any evidence to show that the appellants had made any extra remittance or that the supplier and the buyer were related persons, there was no justification for rejecting the transaction value. With regard to the charge of mis-declaration, it was argued that since the goods consisted of

Korean, Taiwan and Chinese origin, the declaration that the goods were of Chinese origin cannot be called a mis-declaration, particularly in view of the fact that the goods were received from Hong Kong which is a part of China. With regard to penalties, it was submitted that no distinction could be made between a proprietary concern and the proprietor. Therefore, there is no legal justification for imposition of penalties separately,on the importing concern and the proprietor.

7. The submission of the learned DR in support of the impugned order are that capacitors is a general purpose part in electronic goods and are identified and sold based on voltage. He, therefore, submitted that the distinction sought to be made between the imported goods and goods of comparable voltage was not justified. It has also been submitted that the declared value was extremely low and the value of comparable goods have been at much higher prices (seven times). He also submitted that the packing of the goods in polythene bags after removing all details about brand, manufacturer, part No., etc. has been done only to mis-declare the value and exact description of the goods. The pasting of paper stickers having marking of 'Samsung Korea' "TA 8637 Toshiba Japan" etc. and providing details regarding specifications was done to enable the sale of the capacitors depending upon their correct specifications and on identification that they are the products of a leading manufacturer, like Samsung of Korea and Toshiba of Japan. He submitted that in these circumstances, adopting the sale value of comparable goods was fully justified. He also submitted that the mis-declaration of country of origin as China while the goods were of Korean/Japanese origin is a clear indication of intention to mislead the Customs authorities about the quality and value of the goods inasmuch as it is generally assumed that the electronic goods of Chinese origin are of inferior quality while goods of Korean and Japanese origin are much superior and more expensive. He, therefore, justified the imposition of penalty.

8. We have perused the records and have considered the submissions made by both the sides. At the outset, it may be stated that separate penalties can not be imposed on the importing proprietary concern and the proprietor of the importing concern. Further, the submission of the learned counsel that enhancement of value on pro-rata basis in respect of 91 varieties of capacitors is contrary to the

provisions of Customs Valuation Rules, constitutes the correct legal position. Therefore, relief is merited in these two areas. With regard to enhancement of value in respect of items for which contemporary imports were available, we are in agreement with the Revenue that the declared value was very low, the goods have been imported without declaring their full details and this has been done only to hide from the Customs authorities the full details about their brand name, quality etc., even though from the sticker and other markings they could be identified as of Japanese and Korean origin. Therefore, rejection of invoice value and the assessment of the goods at the value of comparable goods was justified. The valuation adopted for ICs based on quotation was also justified. The supply of the goods from Hong Kong is no justification for declaring the goods as of Chinese Origin. It has adequately been established that the country of origin of the goods had been intentionally misdeclared. Therefore, their confiscation and imposition of penalty on the importer have to be upheld as legally correct and justified in the facts of the case.

9. In view of the foregoing, in appeal No. C/9/2000-A we reduce the differential duty demand from Rs. 3,29,716/- to Rs. 1,73,275/-. The penalty of Rs. 50,000/- imposed on Shri Inderpal Singh also is set aside. Subject to the above modifications, the impugned order is confirmed. In Appeal No. C/8/2000-A differential duty demand is reduced from Rs. 7,47,001 to Rs. 5,81,001/-. Subject to this modification the impugned order is confirmed. Both the appeals are disposed of on the above terms.