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Embarkation Headquarters Vs. the Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-22-1983

Reported in : (1983)LC1051DTri(Delhi)

Judge : F Cill, T Shrinivasamurthy, D Lal

Appellant : Embarkation Headquarters

Respondent : The Collector of Customs

Judgement :

1. This appeal has been filed against the order of Appellate Collector of Customs, Bombay, which was despatched to the party on 17.6.1980. A revision application dated 29.11.1980 was filed by the appellants against the Appellate Collector's decision which on transfer to this Tribunal has been registered as an appeal.

2. The appellants imported the goods in question in the year 1975. The value declared in the bill of entry for purposes assessment was indicated as Rs 2,98,328/-. However, the assessing officer enhanced the case to Rs. 3,17,857/-. The appellants had arrived at the assessable value declared in the bill of entry, viz, Rs. 2,98,328/- as consisting of (a) invoice value of US dollar 28,257, (b) Rs. 56,028.70 as freight (paid in Indian rupees) and (c) Rs. 3,512.95 towards insurance charges.

The Customs Officer, however, levied duty on the enhanced appraised value of Rs. 3,17,857/-.

3. Aggrived with the assessment made by the Customs authorities, the appellants preferred a refund claim for Rs. 32,175.16. In the refund claim, against the column 'grounds of claim', all that was stated by the appellants was that the Customs authorities had adopted the assessable value of Rs. 3,17,8577- as against Rs. 2,98,325/- which, according to the appellant, was the correct assessable value. The Assistant Collector of Customs (Govt. Stores Section), vide his order dated 13.7.79, rejected the claim for refund as he found no merit in the same. When the matter was raised before the Appellate Collector of Customs, Bombay, he rejected the Appellant's case on the ground that no proper reason has been put forward by the appellants in support of their claim'. It was for the first time in the revision application dated 29.11.1980 that the appellant raised the question of the rate of exchange and made out a case that the correct rate of exchange for purposes of assessment should have been taken as US dollar 11.02 equal to Rs. 100/-. Working on this basis, the appellant reduced the refund claim from Rs. 32,175.16 to Rs. 2,497.49. In the course of the hearing before us, it has been contended that in arriving at the assessable value, the customs authorities had applied a wrong rate of exchange.

However, it is interesting to note that in the revision application the appellant has, of his own accord, reduced the claim for refund from Rs, 32,175.16 to Rs. 2,497.49.

4. We find it rather strange that before the lower authorities the appellant had not raised the issue of the rate of exchange vis-a-vis the assessable value of the goods. For the first time before us an assertion to this effect has been made and a substantially lower refund amount viz. Rs. 2,497.49 has been claimed. Shri Rao, who appeared for the appellant, explained that they themselves come to know much later that an incorrect rate of exchange had been applied and therefore they raised the fresh ground for claim at the revision application stage only. Shri V.M.K.- Nair, on behalf of the respondent, brought to our notice that there was no force in the contention of the appellant that the sale of exchange applied for conversion was incorrect. He stated that the rate of exchange adopted by the Customs authorities, viz, US dollar 11.02 equal to Rs. 100/-, was the correct rate of exchange at the relevant time and en this score the appellant was misinformed.

Shri Rao conceded this point but gave a completely new twist to his argument. He stated that applying the rate of exchange adopted by the Customs authorities the appellant would still be entitled to a refund of Rs. 2,497.49 because the Customs authorities had made an arithmetical miscalcutation in arriving at the assessable value with reference to the rate of exchange referred to above. However, Shri Rao was not in a position to point out how and where this arithmetical mistake had taken place. Shri Nair, on the other hand, submits that there is no mistake as alleged by the appellant. Shri Nair also took exception to the appellant changing his stance for seeking relief at this late stage without producing any acceptable evidence.

5. We have given very careful consideration to the entire matter. We observe that neither before the Assistant Collector nor before the Appellate Collector the appellant had pointed out that the refund was on account of the application of an incorrect rate of exchange. In fact no ground whatsoever was mentioned in support of the claim. Even at the time of hearing before us an assertion has been made that a sum of Rs. 2,497.49 had been excess charged due to an arithmetical mis-calculation. This assertion has been made without taking any trouble to prepare a worksheet to show the nature of the arithmetical mistake and how exactly the amount of Rs. 2,497.49 had been arrived at.

We feel that the manner in VrbMki the appellant has pursued this case at various stages is not commendable. In any event we do not find any valid ground to interfere with the order of the Appellate Collector.

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