Nichrotme Industries Vs. Cc

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SooperKanoon Citation : sooperkanoon.com/19300

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-03-2000

Reported in : (2001)(94)LC724Tri(Mum.)bai

Judge : K Sreedharan, B T K.K.

Appellant : Nichrotme Industries

Respondent : Cc

Judgement :

1. In this appeal, the importer challenges order-in-appeal No.O/A-545/99 AP Misc. (JCH) dated 21.5.1999 wherein order-in-original No.S/10-11/98 GR. IV dated 15.5.1998 was confirmed.

2. Short facts necessary for the disposal of the appeal are as follows.

Appellant imported 20.047 MT of Cadmium Metal Ingots having 99.95% purity valued at the rate of 30 cents per lb. On inspection by the Customs authorities, it was found that 10.030 MTs were of cadmium plates of different sizes. The assessing authority held that the goods were mis-declared in the bill of entry as cadmium metal ingots resulting in violation of the provisions contained in Section 111(m) of the Act subjecting the importer to penalty under Section 112(a) of the Act. Consequently, the assessing authority enhanced the value of 10.03 MTs of the cadmium plates by 20%. The plates were thus assessed to the duty of Rs. 29,420/-. That quantity, namely of cadmium plates, was confiscated with option to redeem it on payment of redemption fine of Rs. 25,000/-. A penalty of Rs. 5,000/- was also imposed on the importer invoking the provisions contained in Section 112(a) of the Act. This order passed by the adjudicating authority was challenged before the appellate authority. Appeal having been dismissed, the importer has come up in second appeal before this Tribunal.

3. The importer Mr. J.P. Sharma personally appeared before us and argued the case. According to him, the packing list showed the size of the cadmium sheets which were imported. From the size of the sheets, it was clear that they were not suitable for sale in the open market.

Further, according to him, the foreign exporter had stated that both plates and ingots were valued at the same rate. Therefore, it was argued that there was no justification for enhancing the value of the plates by 20%.

4. We heard learned Departmental Representative. According to him, no evidence worth the name was produced before the assessing authority or the appellate authority to show that the cadmium plates were not saleable in the open market/domestic market and that they were valued at the rate at which cadmium ingots were valued. In the absence of such evidence, according to him, the assertion made by the importer before this Tribunal that both were having the same value cannot be accepted.

5. From the files, it is seen that the importer produced copy of 'The Economic Times' New Delhi dated 26.8.1999 to support his contention that cadmium plates and cadmium ingots were valued at the same rate.

Since the import was on 16.4.1998 as against bill of entry No. 1815, the issue of 'The Economic Times' dated 26.8.1999 cannot be of any assistance to the assessee. Even the issue dated 26.8.1999 shows that cadmium plate is valued at a higher rate compared to rod. The difference in value between cadmium plates and ingots is not discernible from this issue either. According to us, this item of evidence shows that cadmium plates are valued at a higher rate compared to rod. Adjudicating authority as also the appellate authority came to the conclusion that the value of the plates was 20% higher than the price of ingots. There is nothing on record to show that that conclusion reached by the adjudicating authority is not correct. The material made available by the assessee also will go to show that plates are valued higher.

6. Out of 20.047 MTs, 10.03 MTs were plates and its value was enhanced by 20%. We do not find any illegality or error in the said action of the authorities in enhancing the value of cadmium plates. On account of the enhancement in value, duty liability increased. Since there was mis-declaration of the goods, authorities were justified in concluding that the goods were liable to be confiscated under Section 111(m) of the Customs Act. The goods so mis-declared were confiscated with an option to redeem it on payment of Rs. 25,000/-. A penalty of Rs. 5,000/- alone has been imposed under Section 112(a) of the Act. We do not find any ground to interfere with the orders passed by the authorities below. Consequently, the appeal fails.