

Commissioner of Customs Vs. Maini Traders

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-01-2000

Reported in : (2001)(127)ELT388Tri(Mum.)bai

Appellant : Commissioner of Customs

Respondent : Maini Traders

Judgement :

1. The question for consideration by the Commissioner is the valuation of a consignment of glass sheets imported by Maini Traders, the respondent to this appeal.

2. We have heard the departmental representative. The respondent is absent and unrepresented. The declared value of the glass sheets of Japanese origin imported by it in August 1994 is US \$ 1460 per metric ton (tonne) CIR. The department was of the view that the price should be equal to sterling pound 2903 per tonne. This was based on the price quoted in the London Metal Exchange (LME for short) of the FOB price of pound 2853 in addition to pound 50 towards the freight. The importer resisted the notice issued to it in this regard, contending that LME price should not be applied, and was in any case only applicable to goods of UK origin. The Asstt. Collector declined to accept these contentions. He said that the prices of the LME represented the contemporary international price; buyers and sellers accept these for entering into contracts. He noted that the high variation between LME price and the declared price had not been explained. He further said that the fact that the goods had been sent from Japan, the invoice

value was quoted by a seller at Singapore showed that the invoice did not represent the transaction value. He therefore enhanced the value of the goods under Rule 7 of the Customs Valuation Rules.

3. The importer appealed this order. The Collector (Appeals) accepted the contention of the appellant before him that it had not been shown by means of evidence that there had been import of goods, contemporaneous to the imports under consideration at the price which the department sought to apply. Relying on various decisions of the Tribunal, he held that the department had not made out a case of under valuation, allowed the appeal and set aside the Asstt. Collector's order. Hence this appeal by the department.

4. The ground in the appeal that it is an established fact, and generally known, that LME price represent contemporary international price of various priced material product. The Tribunal's judgment in Poona Plastic Inds. v. CCE is cited to say that where the deals are between parties, the facts are not visible and the transaction is covered by a veil of secrecy. It is also pointed out that the contention of the importer of the goods that the goods are stock lot or disposal goods was not supported by evidence.

5. We do not have difficulty in accepting that price at which goods are cleared in the LME would, by and large, reflect the trend of the price prevailing in the international market. We also note what the Asst.

Collector says, that the goods, chromium covered brass sheets, are rarely imported. We agree that the value declared by the importer, which is about 1/3rd what the LME price is stated to be, is open to question.

6. The reason advanced by the Asstt. Collector for not accepting the transaction value, that, while the shipment was from Japan, the seller was in Singapore, is entirely unacceptable. The fact of the supplier of the goods being at a place different from the place of manufacture or of supply is common enough in domestic and international commerce, and is not by itself sufficient to arouse suspicion, let alone to reject the transaction value. Further, the Asstt. Collector has applied the L.M.E. price of brass sheets of a different commodity. We are not in a

position to say that the price of brass sheets is in every case less than the price of chromium coated brass sheets. While this would appear to be prima facie true, it may be that the contrary is true. The appeal does not contain any material on this aspect.

7. The position therefore would be that, while the value declared by the importer is certainly suspect, there is no valid reason given for the substantial difference in value. The appeal has not advanced any ground for justifying interference with the Commissioner (Appeals)'s order.

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