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Commissioner of Cus. Vs. Hakim Hardware and General Stores

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-31-2001

Reported in : (2001)(129)ELT650Tri(Mum.)bai

Appellant : Commissioner of Cus.

Respondent : Hakim Hardware and General Stores

Judgement :

1. We have carefully examined the impugned order, the grounds of appeal and connected records. We have also heard learned JDR, Shri J.M.George, for the appellant-Revenue. The respondents are not represented in spite of notice. This is an old matter and, therefore, we proceed to dispose of this case finally.

2. The brief facts of the case are that the respondents had imported 8000 pairs of M-locks and claimed clearance thereof by filing bill of entry on 20-9-1995. The declared invoice price was US $ 0.525 per pair.

The Customs authorities suspected that the declared price was very low when compared to local market price. Therefore, they conducted market enquiry. They also gathered information from the Directorate of Intelligence regarding the actual price of the impugned goods. The department sought to load the value of the imported goods on the basis of the DRI information. Since show cause notice was waived by the importer, the matter was adjudicated by the Assistant Collector on the basis of personal hearing. The adjudicating authority held that the imported goods in question were unbranded and some of them were of inferior quality when

compared to like goods in the market. The adjudicating authority accordingly ordered assessment on the basis of the value US $ 0.80 per piece. The appeal filed against the decision of the Assistant Collector was allowed by the Commissioner of Customs (Appeals), who directed the lower authority to accept the declared value for the purpose of assessment. The Revenue's appeal now before us is against the order of the Commissioner (Appeals).

3. We have heard learned JDR, after examining the grounds of this appeal. The learned JDR submits that the assessment ought to have been done, as held by the adjudicating authority, on the basis of the value of similar goods as gathered by market enquiries. The learned JDR submits that similar goods considered by the assessing authority for the purpose of arriving at the correct value of the goods in question were of superior quality and, therefore, an allowance of 30% was given for determining the correct value of the imported goods in question having regard to the inferior quality of the goods. In answer to a query from the bench, learned JDR admits that no technical opinion was taken in the matter of assessing the extent of the difference in quality between the imported goods in question and the standard goods chosen for comparison. We have noted from the order of the Commissioner (Appeals) that the lower appellate authority has found that no contemporaneous importation of the goods adopted for comparison was found in the case and, therefore, the valuation sought to be done in terms of the provisions of Section 14(1) of the Customs Act was clearly illegal and unsustainable. The learned JDR has stressed that it is the provisions of Rule 8 of the Customs Valuation Rules read with Sub-section (1) of Section 14 of the Customs Act that was invokable for the correct valuation of the goods in question. We find that Section 14(1) of the Act provides for determination of value of such goods or like goods ordinarily available for sale, etc., at the place and time of importation. In the instant case we find that the standard goods chosen for the purpose of determination of value of the impugned goods were not goods imported into India at or about the time of importation of the latter goods. This is a clear finding recorded by the learned Commissioner (Appeals) in his order. We see no reason to interfere with this finding of fact. Since an essential condition as laid down under Section 14(1) of the Act for the purpose of determination of the correct value of the imported goods in question was not satisfied, the provisions of Section 14(1) of the

Act were erroneously pressed into service. The assessing authority ought to have accepted the determined price and made the assessment on that basis. The impugned order passed by the Commissioner (Appeals) is correct and we uphold the same. The Revenue's appeal is rejected.

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