

Resina Combination Vs. Collector of Customs, Madras

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-24-2001

Reported in : (2001)(138)ELT1019Tri(Mum.)bai

Appellant : Resina Combination

Respondent : Collector of Customs, Madras

Judgement :

1. In this case the bill of entry No.262423 dated 31/07/1992, was filed by the Custom House Agents for clearance of 35 drums of goods, declared as tung oil, on behalf of the importers M/s. Resina Combination, Bombay. The importers subscribed to a declaration as to the truth of the contents of the bill of entry and further subscribed to a declaration that they did not receive did not know any other document or information showing different price, value, quantity or description of the goods. The bill of entry was assessed to duty on 04/08/1992 accepting the value declared at 65%+45% under heading 1515.40 CTA together with the benefit of notification 17/91-CE for levy of additional duty.

2. When the goods were about to be taken delivery, DRI was in receipt of intelligence that the subject import had been undervalued with intention to evade payment of duty. Hence the clearance of the consignment was stopped and the duplicate bill of entry was collected from the CHA. Perusal of the documents revealed that the goods were shipped from Holland directly to Madras and the country of origin has been declared as Argentina. The importers did not produce the invoice raised by the suppliers in Holland but instead produced the invoice

raised by the Hong Kong company. It was ascertained that similar goods were imported through Bombay Port at the price of US \$ 2125 PMT. In the first case, the import was by M/s. Formica India Division of 5 MT of tung oil from the same suppliers at US \$ 3100 PMT, and in this case the goods were of Paraguay origin. Since the goods under reference did not correspond in respect of the value in the bill of entry, the department was of the view that the goods were liable to confiscation for mis-declaration of value and that the importers were liable to penalty.

Show cause notice was thus issued proposing recovery of short levy of Rs.4,87,669/- proposing confiscation of the consignment and proposing, penal action.

3. The Collector of Customs loaded the declared value of US \$ 1050 CIF to US \$ 3100 PMT in terms of Rule 8 of the Customs Valuation (Determination of Price of Imported Goods) Rule,1988 and on this basis he confirmed the short levy, confiscated the goods with option to redeem the same on payment of fine of Rs.1 lakh and also imposed a penalty of Rs.50,000/- on the importers. Hence this appeal.

4. We have heard Shri S.N. Kantawala, learned Counsel for the appellant and Shri Arun Chopra, the learned DR.5. The data regarding the prices collected by the department relates to imports of the same item of South American origin during the contemporaneous period and the prices in respect of clearances of Formica India and Bakelite Hylam Limited, have been much higher than what has been declared by the importers in the present case. Therefore we agree with the adjudicating authority that there is sufficient scope to doubt the correctness of the value declared as transaction value in terms of Rule 4 of the Customs Valuation Rules. We therefore hold that the transaction value as declared under 4 is not acceptable and proceed to determine the value of the goods in terms of the subsequent rules in their order of sequence.

6. Of the two prices relied upon by the department one represents the price of tung oil of Paraguay origin and the other of Argentinean origin. Reference to Rule 5 of the Valuation Rules would show that under the criterion for the purpose of

comparison under that rule is that the goods drawn for comparison are to be produced in the country in which the goods being valued were produced. Therefore normally only the price in the case of goods of Argentinean origin would be applicable in the instant case. It would be more appropriate, however, to move to Rule 6 of the Valuation Rules which deals with transaction value of similar goods. The goods in question are closer in comparison to the goods imported by M/s. Formica India inasmuch as both are of Argentinean origin and the quantity difference is also very marginal. The imports are also contemporaneous- Formica India imported in March, 1992 while the present import is June, 1992. The goods imported by M/s. Bakelite Hylam Limited are of a different country of origin even though both countries are South American countries. Further the quantity imported by M/s. Bakelite Hylam Limited is little over double the quantity imported by the appellants herein. Hence we adopt the transaction value of the goods imported by M/s. Formica India which is US \$ 2125 PMT and accordingly enhance the value of tung oil imported by the appellant herein to US \$ 2125 PMT in terms of Rule 6 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988.

7. The submission of the learned counsel that transaction value has to be accepted in the light of the decision of the apex Court in the case of Eicher Tractors Ltd. Vs. CC reported in 2000 (122) ELT 321 (SC) is not tenable for the reason that while the Supreme Court has held that it is only when the transaction value is rejected then the value shall be determined by proceedings sequentially through Rule 5 to 6 and. In the present case the transaction value has been rejected as not genuine.

8. The duty demand on the basis of value of US \$ 2125 PMT is to be requantified for which purpose we remand the case to the Commissioner.

Since we have reduced the loading of the value we also reduce the redemption fine to Rs.50,000/- and the penalty to Rs.25,000/-

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