Bic International Vs. Cc

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SooperKanoon Citation : sooperkanoon.com/24898

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-08-2001

Reported in : (2001)(99)LC113Tri(Mum.)bai

Judge : J Balasundaram, A T V.K.

Appellant : Bic International

Respondent : Cc

Judgement :

1. The appellants herein imported "CFL Energy Saver Lamps" purchased from G & v. International, Hong Kong as per invoice dated 15.1.1999 indicating c.i.f. value of the goods as HK $ 79.026. The declared price was not accepted by the Customs authorities who loaded the value to Rs. 13,28,040 as against the declared value of Rs. 4,34,643/-. As a result of such leading, the duty liability was enhanced by Rs. 5,76,139/-. The goods were confiscated with option to redeem and penalty was imposed on the proprietor of the firm, Shri Brij Mohan Bhatia. The importers filed appeal No. C/236/2000-A which was disposed of by the Tribunal vide Final Order No. 839/2000-A dated 10.10.2000 in which it was held that "the adjudicating authority did not give any cogent reasons for ignoring the transaction value....In such a situation, we are clear in our minds that the authority was not justified in loading the value of the goods on the basis of the so called contemporary imports....We hold that the adjudicating authority has miserably failed in substantiating the case that the value shown in the invoice viz. the transaction value cannot be accepted as the correct value. The goods imported were

subjected to inspection by M/s. Philips India Ltd. The details given by M/s. Philips India regarding the lamps imported do not give support to the conclusions reached by the adjudicating authority. The goods imported are still in the custody of the Customs Department. They can be got examined by experts if the Department feels that they were under-valued, to find out its true character and capacity. They can be got examined by experts of the Department". The impugned order was set aside and the case was remanded to the Commissioner for de novo decision. In the present impugned order, the Commissioner has ordered determination of value of the imported goods at Rs. 9,72,702/- under Rule 6 of the Customs Valuation (Determination of Price of Imported Goods) Rules 1988 read with Section 14(1) of the Customs Act 1962.

Hence this appeal.

2. We have heard Shri R.K. Handoo, learned Advocate and Shri M.M.Dubey, learned DR.3. We note that the impugned order relies once again upon the opinion on the report of M/s. Philips India Ltd., which the Tribunal in its earlier order has held that it does not support the case of the Department. No fresh opinion or report from experts has been obtained.

Although there is reference to goods having been subjected to inspection by an expert from the Department, nothing is forthcoming from the Commissioner's order as to when such inspection took place i.e. whether the inspection was prior to the passing of the first adjudication order or after the passing of the Final Order No.839/2000-A by the Tribunal. Further, the adjudicating authority has not set out the report of inspection and has only stated that the findings of the Department's experts did not in any way support the averments of the importers. Even if the goods were examined after the remand order of the Tribunal, it does not advance the case of the Revenue for the further reason that the appellants' contention that no such report was furnished to them, stands unrebutted. In these circumstances, we are of the view that there is no alternative except to accept the transaction value. The prayer of the learned DR for remand of the case once again to the Commissioner is rejected having regard to the fact that the Department had the opportunity of getting the goods examined by experts pursuant to the Tribunal's remand directions, but failed to avail of the opportunity and further having regard to the fact that the matter has been pending for the past 2 and a years.

4. In the light of the above discussion, we accept the price declared by the appellants for the goods, set aside the impugned order and allow the appeal.