

Pujara Packaging Vs. Commissioner of Customs, Mumbai

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-27-2001

Judge : S T Gowri, G Srinivasan

Appellant : Pujara Packaging

Respondent : Commissioner of Customs, Mumbai

Judgement :

1. The appellant filed a bill of entry for clearance of one Solna 225, 2 colour offset printing machine and one 45 inch guillotine. Both were declared to be second hand. Examination of the consignment revealed the presence in addition of these two machines of one more second hand Solna two colour off set machine. Proceedings were initiated against the appellant proposing among other things, to enhance the value of these machines. The order of the Additional Collector of Customs passed in adjudication resulted in such enhancement. On appeal from this order, the Tribunal accepted the contentions of the importer that valuation of second hand machinery ought not to be based on other second hand machinery unless it was shown that it was identical in characteristic and use. The order read as follows: "In view of teh assessable value of imported goods comprising of two second hand "Solna 225- Two Colour offset printing machine" one old "guillotine 45 inch" Polar 115 Electromat" machine was determinable on the basis of the unit price of each type of machine as indicated in supplier' invoice. Since the case records did not contain invoice and the suppliers' invoice.

Since the case records did not contain invoice and the Chartered Engineers certificate, we remand the case to the Assistant Collector for determining the assessable value of the machines and consequential relief to the appellant, if any". By a subsequent order, the Tribunal substituted the word "Additional Collector" for the word "Asst.

Collector" appearing in the above extract.

2. The importer accordingly approached the Custom House. The Dy.

Commissioner of Customs passed an order on 4.4.96. In that order he determined the value of the guillotine to be 5030.50 and Solna 225 machine to be 9700 each, (totaling 19,400) and ordered consequential relief subject to the provisions contained in Section 27(2) of the Act.

In the light of these last observations, notice was issued proposing to deny the refund of duty which would otherwise be due. Adjudicating on that notice, the Additional Commissioner found that the incidence of duty had not been passed on and ordered refund to be credited to the Consumer Welfare Fund. These two appeals are against the order of the Commissioner (Appeals) confirming these orders.

3. The first contention of the counsel for the appellant relates to the valuation of the Solna machines. In determining the value, the Dy.

Commissioner has gone by the price in the invoice of one Solna machine to be 9700 pounds and applied it. It is contended before us that, by a subsequent corrigendum the supplier of the machine has said that the first invoice contained a typographical error and that the invoice should have read two machines instead of one. The invoice in two places mentioned one printing machine. The general declaration in it of "Printing machinery (second hand)" mentions one Solna 225 machine.

Further down, there is a specific entry for one Solna 225 machine packed in cases 3, 4, 5 and 6. The explanation offered for the mistake by the supplier is that the letter of credit which was opened at the instance of the importer 'incorrectly' read

one machine instead of two.

It is now the claim before us that the letter of credit incorrectly mentioned one machine, and not two. Such an absurd contention has to be dismissed. We therefore conclude that the so-called correction is worthless.

4. The next contention that the value indicated in the certificate of the chartered engineer who examined the goods and certified them to be second hand machinery (as required by the Import Policy) of 4850 ought to be accepted again requires dismissal. The Tribunal has ordered valuation on the basis of the invoice and not based on any other document.

5. We therefore find no ground for interference with the value accepted by the Dy. Commissioner.

6. Counsel for the appellant then contended that he would be able to show that the incidence of duty, of which the refund would be otherwise due had not been passed on the requested time to produce documents in support of his contention. The matter was therefore adjourned to 27.9.2001. On that date, the counsel conceded that he has been unable to obtain such document. It would then follow that the finding that the refund is payable, not to be appellant, but to the credit of Consumer Welfare Fund for the reason that it has not been shown to any other person, has to be confirmed.

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