

Multi-tech. Computers Pvt. Ltd. Vs. Commissioner of Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-04-2002

Reported in : (2002)(146)ELT593TriDel

Judge : K Usha, N T C.N.B.

Appellant : Multi-tech. Computers Pvt. Ltd.

Respondent : Commissioner of Cus.

Judgement :

1. Challenge in this appeal is against the Order passed by the Commissioner of Customs (Appeals) in Order-in-Appeal No. HKS (566) SVB/2001, dated 6-7-2001. This is the second round of the appeal between the appellant and respondent in respect of the very same issue.

Vide Order dated 20-4-93 this Tribunal had set aside the Order passed by the Collector of Customs (Appeals) dated 9-10-1991 for the reason that the basis on which 5% was directed to be loaded to the invoice price was not discernible from the Order-in-Appeal. The impugned order was, therefore, set aside and the matter remanded to the Assistant Collector/ Customs with the direction that the adjudicating authority shall issue a Show-Cause-Notice and the appellant will file a reply to the same. It is thereafter the Assistant Collector has passed order dated 29-3-2001 which was affirmed by the Commissioner (Appeals) in the impugned order.

2. The appellant had imported certain parts which were required for manufacturing Modems from M/s. Multi-Tech. Computers Pvt. Ltd. which held 33% of the total equity on the terms of collaboration and approved by the Reserve Bank of India. The appellant contented that the supplier had added 10% on which the supplier purchased the goods in their own name. The original authority took the view that the importer has not been able to demonstrate the complete list of invoice of the goods procured from other sources. He ordered that the goods imported by the appellant shall be assessed after loading 5% to the declared import price. For coming to the above conclusion he has relied on 4 reasons which are referred as 'a' to 'd'. It is interesting to note that the very same reason has been mentioned in the earlier order which was subject matter of the decision of the Tribunal dated 20-4-93. In spite of specific direction that the basis on which the authority had taken a decision to load the declared import price by 5% has to be made available to the party, there is no reference to that aspect in the present order. Going by the established practice when the authority takes a decision to load the declared import price, it must be on the basis of available material. The authority cannot imagine a figure and make an addition to the declared import price. The Commissioner (Appeals) has also not bothered to look into the specific direction given by this Tribunal in its Order dated 20-4-93. No attempt was made to examine whether 5%, which was directed to be loaded to the import price, was on the basis of any material whatsoever.

3. We find that the impugned orders are not maintainable under law and they are only to be set aside. We, therefore, set aside the impugned orders and allow the appeal.

4. In the light of the view which we have taken in this decision the transaction value is to be accepted in the absence of any other material and consequential relief should be granted accordingly.