insight Communications Vs. Commissioner of Cus. (import)

insight Communications Vs. Commissioner of Cus. (import)

SooperKanoon Citation : sooperkanoon.com/27404

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-30-2002

Reported in : (2002)LC922Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : insight Communications

Respondent : Commissioner of Cus. (import)

Judgement :

1. The question for consideration in this appeal is the value for assessment of the electronic equipment used in the printing industry imported by the appellant. The goods, such as scanners, image setters, photo type setters were supplied by Scitex Asia Pacific (H.K) Ltd., Ecographics, Denmark and Ultre, USA. It is not disputed that Scitex Asia Pacific (HK) Ltd. is owned by subsidiary of Scitex Corporation of Israel company which manufactured the goods. The goods which were consigned in 38 consignments which arrived at Mumbai by air from December 1996 to February 1998. The appellant filed bills of entry for their clearances indicating the value shown in the invoices for these consignments. The goods were permitted clearance at these values. The department had in its possession price list issued by the Israel manufacturer which showed the price of the goods to be substantially higher - 40% to 55% - than the price declared in the invoice.

Subsequently the department searched the premises of the appellant and obtained from it a price list of the Hong Kong supplier and an agreement between the appellant and the supplier. This agreement, described as a reseller agreement provided that the appellant would purchase the goods from Scitex Asia Pacific Ltd. for the purpose of reselling the goods to other buyers in India. Apart from providing various conditions relating to supply of goods etc. the agreement contained in Clause 4 a condition that the appellant "shall purchase the Products from STAP at STAP price list discounted by 20%. Such list price shall be issued on quarterly basis and may be amended by STAP from time to time upon thirty (30) days prior written notice to reseller." Based on these documents notice was issued to the appellant proposing to adopt for assessment the price specified in the price lists of the manufacturers, and therefore demanding duty short levied.

Penalty was also proposed. The notice however did not rely upon the agreement between the appellant and Scitex for enhancing the value.

2. The appellant in its reply resisted the contention in the notice. It contended that the transaction value that it declared had to be accepted, none of the exceptions specified in Rule 4 of the Customs Valuation Rules, 1988 being applicable. It relied for this purpose upon the judgment of the Supreme Court in Eicher Tractors Ltd. v. CC [2000 (122) E.L.T. 321]. It further contended that the goods have been imported at prices lower than the price lists by various other persons without any objection being taken by the department, citing in support of the proposition 13 bills of entry.

3. The Commissioner did not accept either of these submissions. He said that the Supreme Court's judgment was not applicable to the facts before him. He expressed the view that it has not been shown that the discount that was given to other buyers, which the appellant had cited, has been accepted to be genuine by the department. He confirmed the proposal in the notice demanding duty and imposing penalty.

4. The counsel for the appellant raises the same grounds that were raised before the Commissioner. As to the second point, viz. the acceptance by the department of prices lower than the price lists, of other imports, the department had three

occasions (two during the hearing of stay applications and one thereafter) to verify whether the prices at other imports were declared had been finally accepted or whether these prices have been challenged by the department by filing appeal. The departmental representative tells us today that these prices had not been challenged. He contends however that these bills of entry showed discounts, not of the order that the appellant has received, but much lower ranging between 8 and 33% of the prices in the price lists.

5. The basis, as we have noted, for the department's charge is the existence of the price list. There is no other basis for not accepting the transaction value in the notice. It is now settled law that a price list by itself is no basis for rejecting the transaction value of the goods. This is in fact reiterated by the Supreme Court in Eicher Tractors Ltd. v. CC [2000 (122) E.L.T. 321]. The Court in paragraph 22 said, "A price list is really no more than a general quotation. It does not preclude discounts on the listed price." The fact that other buyers have been given discount at prices lower than those shown in the price list itself goes to show that no goods have ever been imported at the price mentioned in the price list. We agree that there is an absence of uniformity in the price at which the goods were supplied to various buyers. In some cases, the appellant paid for the goods at a price lower than that those that other buyers paid. This is attributed by the counsel for the appellant to the fact that they were actual users whereas the appellant was a trader and bought greater quantity of goods. At the same time, we note that the appellant itself has been paying different prices for the same product at different times. It paid US $ 11250 for Eversmart scanner supplied by Scitex in October, 1997 and another in September, 1997 at a price of US $ 11900 and in December, 1997 at US $ 10000. All these only goes to show that the department had erred in relying upon the price list as the basis for rejecting the transaction value.

6. In its judgment in Eicher Tractors Ltd. v. CC the Supreme Court said that unless the price paid for the transaction falls within the exceptions contained in the proviso under Sub-rule (2) of Rule 4 of the Valuation Rules, the Customs authority are bound to assess the duty on the transaction value. "It declined to accept the Commissioner's contention that Rule 4(1) allows determination of the ordinary international value of the goods to be ascertained on the basis of data other than

the price actually paid." It is clear to us from the judgment of the Supreme Court that unless the transaction is not to be accepted for the reason that any of the exceptions specified in the proviso to Rule 4(2) is applicable, the goods must be assessed at the transaction value. (The Court of course was not concerned with the case where that was really not the transaction value as for example in the case of a manipulated invoice. We are also not concerned with that issue.) Therefore, in absence of any of the exceptions specified in the proviso to Rule 4(2), it is the transaction value that has to be accepted. The departmental representative was at pains to contend that the ratio of the Supreme Court would not apply to the facts before us.

He says that the Supreme Court was concerned with tractors which have been specially manufactured for the buyer. That is no doubt true. This however does not mean that the ratio of the judgment to be confined to such goods alone. Valuation Rules apply to all goods which are imported. The findings of the Court on the applicability arid some of the rules are not limited to particular category of goods. It would then follow that by applying the ratio of the decision, the transaction value of the appellant's goods has to be accepted.