

B.K. Enterprises Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-18-2002

Reported in : (2002)(84)ECC588

Judge : K Usha, S T C.

Appellant : B.K. Enterprises

Respondent : Commissioner of Customs

Judgement :

1. This appeal has been filed against the order in original dated 3.4.2002 passed by the Commissioner of Customs, ICD, Tughlakabad. The appellants imported several components of VCD players each in the quantity of 3200 sets/pieces. The Department issued a show cause notice dated 11.12.2001 proposing enhancement of value for the following three items:

Sl.No.	Description	Declared	Value	Proposed
Value				

1.

PCB(set of 2)	HKD 12	CIF(Rs. 74.04)	US S 6.5
(Rs.313.62)			

2.

Loader HKD 24CIF(Rs. 148.08) US S 8.5 CIF (Rs. 386) 3.

33.61

2. The goods in question were imported from a Trading Company in Hongkong but were claimed to be made in China. However, Model No., Part No., Manufacturer's Name and Specification etc. were not mentioned. In his order dated 3.4.2002, the learned Commissioner has confirmed the valuation proposed for the first two items but for the third item, namely R/F, he has approved assessment at Rs. 14.48 as against the proposed assessable value of Rs. 33.61. He also confiscated the goods in question but allowed redemption on payment of Rs. 5 lakhs as fine and imposed penalty of Rs. 1 lakh.

3. The learned Advocate for the appellants seeks that the order be set aside and the goods released on declared value. The learned Advocate argues that the very same components had been cleared at much lower prices in other Custom Houses such as Calcutta and as per the Customs Valuation Rules, the lowest value noticed for identical/similar goods, at any port be adopted rather than adopting the value noticed at ICD, Tughlakabad. She also states that there is no challenge in the show cause notice or in the order that any extra amount has been paid to the suppliers and, therefore, the declared value should have been accepted.

She further argues that since there is no evidence of any under-hand payment, there is no justification for confiscation of goods and imposition of fine and penalty.

4. The learned SDR argues that the appellants had declared very low prices for the components which were VCD players in SKD condition. He points out from the Commissioner's order that the declared value of the goods imported for 3200 sets of VCD players works put to a very low value of Rs. 355 per set. He also points out that the Commissioner was correct in adopting prices of comparable goods in his port of import which is to be preferred to prices of goods imported at other ports. He states that the Commissioner has consistently adopted the prices at this own port and that is why, he has accepted a lower price of Rs. 14.48 P for R/F whereas the importers themselves had imported the item at Rs. 33.61 P at Mumbai. As regards confiscation and penalty, he states that once the value had been

redetermined and there is a wide difference between the value assessed and the value declared, the goods become liable for confiscation under Section 111(m) and penalty becomes imposable under Section 112. Such a stand, he says, has been upheld by CEGAT earlier in several cases.

5. We find that the learned Commissioner has not cited any specific provision of law including the Customs Valuation Rules under which he has valued the imported goods in question. However, it is clear from the order that he has rejected the declared value going by the fact that the total value of all the components of VCD player in SKD condition minus minor parts, comes to a low value of Rs. 355 per set.

It is also obvious that after rejecting the declared value, he has proceeded to determine value on the basis of value of comparable goods imported at his own port. He has been consistent in this regard for all the three items even accepting a lower value for one of the items despite evidence of higher value for the item imported by the appellants themselves at Mumbai. Since the Customs Valuation Rules provide for valuation of the goods based on comparable prices, we do not find anything wrong in the approach taken by the Commissioner. Once the Commissioner has determined the value as Rs. 23,07,524 for the three parts in question as against the declared value of Rs. 4,63,438 the provisions of Section 111(m) and Section 112 are attracted and, therefore, he is justified in confiscating the goods and imposition of penalty.

6. The learned Advocate for the appellants claims that since she has shown imports at lower prices at other ports namely Calcutta, the Commissioner should have considered such lower prices for valuation as provided under the Customs Valuation Rules. It is seen that under Rule 5 as well as under Rule 6 dealing with identical and similar goods, there is a provision that if more than one transaction value of identical/similar goods is found, the lowest such value shall be used to determine the value of imported goods. However, identical goods and similar goods have very strict definitions under Rule 2(c) and (e) of the Customs Valuation Rules. The details provided by the learned Advocate do not conclusively prove that the importation in question would conform to the definition of identical goods

and similar goods.

The learned Advocate stated in this regard that even the findings of the Commissioner do not indicate that the value used by him relate to identical/similar goods as per the strict definition in the Rules. In this regard, we observe that the valuation used by the Commissioner and the related import details were furnished to the appellants. Whether the consignments were identical or similar is a question of fact required to be examined with reference to stipulations in the Rules and the same can only be determined at the time of adjudication. It was open to the appellants to challenge before the Adjudicating authority the values used were not of identical/similar goods. We find no such challenge was made.

7. In view of our findings as above, we uphold the valuation arrived at by the Adjudicating authority and hold that the goods are liable to confiscation and the importer is liable to penalty. However, taking into consideration the entire facts and circumstances of the case, we are inclined to reduce the redemption fine from Rs. 5 lakhs to Rs. 2 lakhs and penalty from Rs. 1 lakh to Rs. 50,000.

8. Before we conclude, we are constrained to make certain observations about the manner in which the Commissioner had dealt with the issue of valuation. It is true that on reading the order, we have come to the conclusion that the Commissioner had rejected the declared value and had proceeded to determine the value under Clause (ii) of Rule 3 of Customs Valuation. Ultimately, he assessed the value on the basis of comparable goods imported. But it is to be noted that at no place the Commissioner refers to any of the provisions of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 or as to under which provision of the rule had determined the value on the basis of comparable goods imported at his port. As an adjudicating authority, the Commissioner after giving the reasons for not accepting the declared value should have referred to the relevant rules under which he proposed to determine the value. Clause (ii) of Rule 3 provides that If the value cannot be determined under the provisions of Clause (i) value shall be determined by proceeding sequentially through Rules 5 to 8 of these Rules. In view of the above, it is incumbent on the adjudicating authority to refer in this matter as to whether he is assessing the value under Rules 5, 6, 7 or

8. It is essential that such a disciplined procedure should be followed by the adjudicating authority for a proper appreciation of the order in further proceedings.

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