

Cc Vs. Nu Mech. Corpn.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-14-2002

Reported in : (2002)(105)LC783Tri(Mum.)bai

Judge : J Balasundaram, J T J.H.

Appellant : Cc

Respondent : Nu Mech. Corpn.

Judgement :

1. This appeal from revenue was argued by Shri M.H. Shaikh, Shri Anil Balani appeared for the Respondents.

2. The respondents had imported Brass Ash/Dross declaring the copper content to be 30% to 32%. The invoice specifying value of US\$ 405 PMT did not specify any copper content. The sample of the goods was drawn and tested. The test report read as under: The sample is in the form of grey coloured heterogeneous mixture with coarse powder and lumps, both metallic and non metallic including metallic pieces with oxidised surfaces and extraneous matter. The metallic portion is composed of copper and zinc alloy (Brass), and a few pieces of copper, the non metallic portion being composed of metallic compounds, siliceous matter and dirt.

Note: (1) It is not possible to separate the metal in a pure state by Mechanical sorting (2) Heating and refining processes are required to recover the Metal.

3. In view of the high copper content the matter was adjudicated.

During personal hearing the importer contested the finding in the test report and suggested the correct method for determination of the copper content. It was claimed that not all the copper content could be recovered. Citing a judgment of the Tribunal, they requested for retest of the sample. The Additional Collector of Customs remarked that although the request for retest was made, the importers had not come forward. He therefore adopted the test report. He gave an arbitrary set off of 10% for the copper, which was not recoverable. He enhanced the declared value by using the copper content as the multiplication factor. In this manner he confirmed differential duty of Rs. 2,23,285/-. He ordered confiscation of the goods and specified a fine of Rs. 1,25,000/-. He also imposed a penalty of Rs. 60,000/- on the importers.

4. The importers filed an appeal. The Commissioner (Appeals) observed that in the absence of denial of the opportunity for retest of the sample the contentions of the appellants should be accepted. On this ground he set aside the orders of loading and of confirmation of differential duty, confiscation and imposition of penalties. Against this order the Revenue have filed the present appeal.

5. In the appeal memorandum the grounds on which the Additional Commissioner held against the importer have merely been recounted. Shri Anil Balani on the other hand submits that the Commissioner was correct in not accepting the higher copper content in view of the denial of the legitimate request for retest. It was his further submission that even if the copper content were found to be higher, the method adopted for enhancement of the value was wrong. The Customs should have examined contemporaneous imports of Brass Ash/Dross of the copper content equal to that alleged. On this grounds he defends the impugned order.

7. As we have observed above, the appeal memorandum is a reiteration of the observations made by the adjudicating authority. The observations have been duly dealt with by the Commissioner (Appeals). We approve of his logic in view of the very basic infirmities pointed out by him. We also find that although the Additional Commissioner had not specified as to how he had arrived enhanced value, it was apparently on the best Judgment method. He could not proceed directly to that rule without first adopting contemporary valuation of identical or similar goods.

8. On perusal of the documents and the order, we find nothing in the appeal memorandum to negate the belief of the Commissioner (Appeals).

This appeal does not succeed and is dismissed.

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