

Parshwanath Traders and Core Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-07-2002

Reported in : (2003)(86)ECC145

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

Appellant : Parshwanath Traders and Core

Respondent : Cc

Judgement :

1. The orders impugned in these two appeals relate to imports of used tyres by the appellants. The tyres were declared in the import documents as old used worn out discarded tyres use in animal driven vehicles. The value of the used tyres was declared at US \$ 75 PMT. The impugned orders confiscated the goods and imposed penalty on the appellants on the ground that the goods have been mis-declared in respect of description for the purpose of Import Policy and undervalued in regard to levy of customs duty.

2. The findings are based solely on market enquiry. It is the contention of the appellants that there was no reliable evidence justifying the findings. It has been pointed out that, even according to Panchanama prepared at the time of seizure, the tyres in question were old and used. Part of the consignments have also been accepted as tyres for animal drawn vehicles, tractor trolley etc. The objection is in respect of the remaining tyres as they have been held to be for LCVs. The appellants have pointed out that the witnesses whose evidence has been relied

upon for the adjudication of the case are not expert whose testimony should carry conviction. According to the impugned orders themselves, the witnesses of the department are dealing in retreading of tyres. They have no experience in the trade of imported second-hand tyres, with regard to their price, use etc. Further, one of the witnesses (Shri Ram Kumar Verma) has stated that the signature contained in the expert opinion was not his casting serious doubts about the credibility of the investigation itself. The other witness, Shri S.S. Jadeja did not appear for cross-examination. The appellants also point out that, on account of use, the tyres under import had become not fit or safe for the high speeds of motor vehicles. They were accordingly declared as for animal driven vehicles.

3. With regard to the valuation of the goods, the appellants submission is that old and used tyres are sold on weight basis and there is no fixed, common, price for such goods. The appellants submit that the prices declared in the import documents were the actual prices paid and those transaction values merit acceptance for custom assessment.

4. The learned Counsel has also relied on the decision of this Tribunal in the case of M.A. Export and S.S. Tyrewala v. CCE, Allahabad (Final Order No. 425 to 42912002-A dated 3.9.2002, He has pointed out that the facts and evidence in the present cases are almost identical to the facts in the cases disposed of under that order and the Tribunal had allowed the appeals on the ground that the action taken by the department was not supported by insufficient and unreliable evidence.

We have heard the learned SDR also.

5. These cases relate to import of used automobile tyres. The examination has confirmed that the goods are as per declaration i.e.

they are old and used tyres. According to the Panchanama also the goods are old and used. The appellant's contention is that because of their being old and used, their residual use would be on animal driven vehicle, trolley etc. The evidence is partly in support of this contention as part of the consignments were opined the witnesses also as for A.D.V. The appellants' contention that the findings in the

impugned orders lack sufficient and credible evidence merits acceptance. The witnesses are engaged in retreading of tyres. They have no knowledge about the imported tyres. The credibility of purported evidence also is quite doubtful. One witness has disowned the statement. Another was not made available for cross-examination. In these circumstances, the impugned orders are required to be set aside as they lack sound basis in evidence. These cases are also similar to the appeals allowed by us under Final Order No. 425 to 429/2d02-A dated 3.9.2002.

6. In view of what has been stated above, the impugned orders are set aside and appeals are allowed with consequential relief to the appellants.

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