

Noor Niryat Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-15-2002

Reported in : (2003)(158)ELT580Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Noor Niryat

Respondent : Commissioner of Customs

Judgement :

1. The appellant imported in August 2002, a consignment of used 14" colour monitors for computers of different brands. It declared a value of US\$ 7 per monitor. The Department was of the view that the declared value of these required enhancement and further that the import of the goods required a licence. On this being communicated to it, the importer waived written notice and was heard in person by the Commissioner who passed the order impugned in this appeal.

2. In that order, the Commissioner has held that the correct value of the monitors is \$ 16 per monitor which was the value which the Deputy Commissioner determined for a consignment of monitors imported at Mulund. He therefore enhancement of value ordered confiscation of the goods, in the absence of a licence, giving the importer an option to redeem them on payment of fine of Rs. 8 lakhs and also imposing a penalty of Rs. 2 lakhs. Hence this appeal.

3. The Counsel for the appellant makes two submissions as to the value.

He says that the Tribunal has held in its decision in *Essar Graphics Pvt. Ltd. v. CC - 1999 (107) E.L.T. 94* that the provisions of Rule 4 of the Valuation Rules will apply with equal force to second hand goods as they apply to new goods. Therefore, the transaction value of such goods will not be acceptable only in cases where one of the four exceptions contained in the proviso of Sub-rule (2) of Rule 4 applies. That is not the case here. He says further that similar consignments of monitors imported at Kolkata at about the same time has been assessed at US\$ 8 per piece. He has no objection of the value of the imported goods being assessed at \$ 8 per piece. As to the redemption fine, he contends that no reason has been advanced in the order of the Commissioner for determining the fine in accordance with the two other cases of import (while for the goods at Mulund it was 12.5% in the case of Kolkata it was 12%).

4. The departmental representative contends that the judgment of the Supreme Court in *Eicher Tractors v. CC - 2000 (122) E.L.T. 321* was concerned with new goods and not the second-hand goods and therefore the transaction value has to be accepted. He otherwise reiterates the findings given in the Commissioner's order.

5. The import of the goods under consideration took place in August this year. In the case of the goods imported at Mulund it was in March this year and in the case of Kolkata import it was in July this year.

The three importations are therefore broadly contemporaneous. The details of the brand of the monitors imported in Mulund is not known.

However, the consignments under consideration in Kolkata and in this case both consist mainly of Hyundai and Samsung monitors of 14". We therefore see no reason why the value of the consignment imported at Calcutta at \$ 8 should not be accepted. Accordingly, we order that the appellant's consignments should be assessed to duty at US\$ 8 per monitor. As to the fine, the Commissioner's order is entirely silent as to why, while apply the value decided for the goods imported at Mulund, he has not applied the redemption fine that was applied to them. In the light of this silence and there being no material offered before us to show that the redemption fine determined at 12.5% for the import at Mulund and 12% to that at

Kolkata being incorrect, we think that a fine of 12% would be appropriate. The redemption fine is therefore reduced from Rs. 8 lakhs to Rs. 1.10 lakhs and the penalty from Rs. 2 lakhs to Rs. 25,000/-

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