

Maharashtra Overseas Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-16-2002

Reported in : (2003)(108)LC151Tri(Mum.)bai

Judge : J Balasundaram, J T J.H.

Appellant : Maharashtra Overseas

Respondent : Cc

Judgement :

1. The appellants imported goods described as "22.210 MTs of Acrylic Plastic Sheet Offcuts." The value declared was US\$ 450 PMT (CIF).

Examination indicated that while 5.3. MTs were offcuts, 17 MTs consisted of sheets. In reply to queries the importers claimed that the goods were defective on account of thickness variation, colour fade etc. They also claimed that the term offcuts applied where a sheet was cut from any size. The importers waived issue of show cause notice but were heard by the Jt. Commissioner. He rejected the claim that the goods were offcuts holding that they were regularly sized sheets. On this ground he held the goods to be liable to confiscation under Section 111(m) of the Customs Act, 1962. He observed that similar goods namely non-prime acrylic sheets were earlier assessed at US\$ 850 PMT CIF. He enhanced the valuation of 17 MTs of the imported lot and confirmed differential duty on enhanced valuation of Rs. 1,83,389/-. He confiscated the goods but allowed their redemption on payment of a fine of Rs. 2,75,000/-. He in addition imposed a penalty of Rs.

55,000/- on the importers. In his order in appeal the Commissioner maintained the lower order. An order passed by him in the case of another importer in identical circumstances where he had given relief to the importer was cited before him. He however distinguished it on facts.

2. Shri J.F. Pochkhanwala Sr. Counsel appearing along with Shri H.R.Shetty advocate emphasised that the facts in the case were on par with the case of the other importer namely M/s. Sun Acrylics Pvt. Ltd. He quoted from both the orders to establish his point. He claimed that the sheet size in the Sun Acrylics case was in fact bigger than in the present case. He submitted certificates of traders and the suppliers justifying the description "Offcuts". He claimed that both authorities had accepted that the goods were not of first quality. Therefore there were no grounds for enhancement of the value. It was claimed that except for the mere mention that imports had been noticed at higher valuation of similar goods, nothing has been disclosed in the order.

Citing the Supreme Court judgment in the case of M/s. Eicher Tractors cc claimed that there was no ground for denying the transaction value.

He further maintained that at all times the importers had offered that the goods be mutilated but the offer was not considered favourably.

5. In the proceedings the word "Offcuts" has come in for discussion.

The claim of the importers is that any sheet which is cut from the standard size sheet is an offcut. It has come in the order that there was no definition of this term.

6. This phrase has been defined by the Tribunal in relation to steel sheet in their order in the case of LML Ltd. v. Collector of Central Excise . In this judgment in the absence of evidence, the Tribunal referred to standard dictionaries, which described offcuts as something that was cut out of. In printing it was piece cut of a sheet to reduce it to the proper size; also a part cut off the main sheet". The Tribunal terms this as "residual material".

7. Viewed in this light it would appear that an offcut is a trimming or a portion cut of from the main body of an article. The reason for such offcuts arising may be

numerous but the character of the offcut would be that of a irregular peace cut of from the main goods. The goods imported in this case are of standard sizes and it would be difficult to accept their description as "Offcuts".

8. Although the invoice does not term the goods as defective, it is accepted by both authorities that the goods are not of prime quality.

9. The submission made by the Ld. Counsel that in the absence of established contemporaneous import at higher valuation, the orders of loading of value would be sustain is correct. We would however not go into the aspect of valuation or in the aspect of misdeclaration in view of the claim made in the proceedings and represented before us by the Ld. Sr. Counsel that the importers wish to have the consignment mutilated.

10. It is correct that the Government have not framed rules in terms of Section 24 of the Act for mutilation of imported goods. However the Tribunal in descending cases have granted such permission. One of the latest judgment in this series is that of S.K. Metal Co. v. CC 2001 (46) RLT 984 (CEGAT-Del).

11. When the mutilation is permitted the effect is that of rendering the goods to the description claimed by the importer in the initial stage. Therefore where the goods were directed to be confiscated after mutilation, the Tribunal had set aside that order Panchmahal Steel Ltd. v. CC 12. In this situation we hold that the request of the importers for mutilation of the contested goods deserves to be accepted. We therefore direct the department to get the contested goods mutilated to the satisfaction of the department. The entire cost of mutilation will be borne by the appellants. On such mutilation being done, there would exist no ground for imposition of fine and penalties and also for enhancement of the value.

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