

Pasupati Traders Vs. Commissioner of Cus. (import)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-11-2003

Reported in : (2003)(154)ELT273Tri(Mum.)bai

Judge : J Balasundaram, J T J.H.

Appellant : Pasupati Traders

Respondent : Commissioner of Cus. (import)

Judgement :

1. The applicant imported calculators, clock spare parts and umbrellas declaring a total value of Rs. 7,04,876/- claiming free import ability.

An invoice from a Trading Co. in Hong Kong was produced. The goods were declared to be of Chinese origin. Details such as model, brand number, etc., were not available on perusal of the invoice. The goods were examined, samples taken and brand and model numbers, etc., ascertained.

Bulk of the goods were of Korean and Chinese make. Except for CT 500 brand calculators, the details of the model, type Nos., etc., did not tally when compared with those on the goods and those on the documents.

Prima facie it was a case of under-valuation. Earlier imports of CT 500 calculators of Chinese origin were noticed at USD 3.36 FOB as against USD 0.29 (CIF) declared by the importers. Importers were not able to produce the manufacturer's invoices. For the other goods market inquiries were conducted and values

obtained. Show cause notice was issued. In reply the importers contested the comparison with the CT 500 brand calculators earlier imported. Findings of the market inquiry were challenged. It was claimed that the loading of calculators of other brands was without justification. It was claimed that the contested goods were a stock lot. The Commissioner, however loaded the price, confiscated the goods, allowing redemption on payment of fine and also imposed a penalty.

2. Shri Doiphode submits that the market enquiry report, which was the basis of escalation of prices, was not given to the appellants in spite of repeated requests. On the ground of denial of natural justice alone, the order deserved to be set aside.

3. Since the goods imported were stock lot, the prices could not be compared with the goods imported other than in stock lot. As regards the prices of Citizen CT 500 calculators, it is his claim that the prices based on the invoice of M/s. Japan CBM Corporation could not be adopted because the consignment supplied by M/s. Japan CBM Corporation to M/s. Rivera Digitee (Ind.) Pvt. Ltd., was of 8600 pieces whereas the appellants in one consignment had imported a very substantial quantity of goods, and therefore, the prices were not comparable. He challenged the methodology of calculation of prices following Rule 7 of the Valuation Rules, as haphazard. The Commissioner's very act of taking the value of the imported goods at about 48% or 33% of the market value of goods of another description could not become the basis for rejection of the declared value. He drew attention to the Supreme Court judgment in the case of Eicher Tractors Ltd. v. Commissioner of Customs [2000 (122) E.L.T. 321 (S.C.)] and claimed that no ground existed for the Commissioner, to have rejected transaction value. Shri Shaikh supports to the Commissioner's order claiming that no evidence was led by the appellants to show that the goods were stock lot.

5. Shri Dhoiphode showed us one piece of paper, which appears to be a letterhead of a shop, at the back of which, there is some jottings showing some valuation. He claims that this was the only market report, which he got from the Customs. Needless to say it cannot be termed to be one.

6. The letter dated 12-5-2000 from M/s. Alam Trading Company addressed to the appellants listed the goods available with the suppliers and said that the goods were at a special price. Counter offer letter dated 18-5-2000 and the acceptance letter by the suppliers dated 20-5-2000 is on record. They show a very hard negotiation but do not show that the goods are "stock lots".

7. The Commissioner in his findings said that the importers have not produced the manufacturer's invoice. The provision to seek such invoice is incorporated in the Valuation Rules. Where the goods are received by a trader, an invoice from the manufacturer is a good indicator to show whether the prices are correct. This is because ordinarily the trader's quotation would be higher than the manufacturer's quotation. This of course is not a cast iron rule. A manufacturer may sometimes sell below his cost of production. A trader who has invested heavily in some goods, which do not move in the market would be burdened with high inventory cost and may sell in distress at a cost lower than at which he bought the goods. In Fast Moving Consumer Goods/ similar items are manufactured by a number of persons. A job worker making goods for a brand name owner may sell identical goods under his own name for a fraction of the value of the branded goods. In such a situation, given the kind of goods involved in the present proceedings, insistence on a manufacturer's invoice may not always be proper.

8. We now come to the specifics of valuation. The customs have shown contemporaneous import of Citizen CT 500 calculators @ US \$ 4.07 as against the declared value of US \$ 0.29. We find that the number of calculators imported in the present consignment were less than in the contemporaneous import. The fact that the present importers have purchased a large quantity of other goods besides the calculators does not go in their favour. The adoption of the higher value on the basis of contemporaneous prices is valid.

9. In the case of other goods, however, the manner in which and the ground on which the higher valuation is adopted do not stand scrutiny.

The Commissioner has proceeded to determine the value under Rule 8 i.e.

the best judgment method on the ground that there was no contemporaneous import nor were any identical/similar goods sold in the market.

10. He then referred to the show cause notice in which the wholesale market value of all other items is shown in Indian rupees. The Commissioner in fact in his order has negated and denied the market prices and, thereafter, has proceeded to adopt a percentage of such market value as the basis of assessment. The reason given by him is "different demand levels for different goods and post clearance duties and expenses such as Octroi, etc.". In view of the clear findings of the Commissioner that market value was not available, this exercise and such determination of prices would be without any legal or logical basis and would be entirely unsustainable.

11. We thus find that except in the case of Citizen CT 500 calculators, the Customs were unable to prove the allegations of under valuation or extent thereof. The liability to confiscation of these goods is established. However, in the face of long storage of these sensitive goods in the warehouse, the quantum of fine will have to be low.

13. The orders of confiscation of Citizen CT 500 calculators valued at Rs. 7,30,960/- are upheld. These are ordered to be redeemed on payment of fine of Rs. 1,00,000/- in addition to duty as calculated at the price of Rs. 182.74 per piece. The orders of confiscation of other goods are vacated. These goods shall be assessed at their declared prices. The quantum of penalty is reduced from Rs. 1 lakh to Rs. 20,000/-.

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