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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-20-2003

Reported in : (2003)(88)ECC109

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

Appellant : Plethico Pharmaceuticals and

Respondent : Cce

Judgement :

1. The appellant M/s. Plethico Pharmaceuticals Ltd. is a manufacturer of medicines. They imported a consignment of over 42 M.T. of extract of liquorice root and filed a Bill of Entry No. 802 dated 14.9.2001 for the clearance of the goods. The import was from M/s. Al-Rai Trading Est. UAE Dubai and the transaction value worked out to over Rs. 11.39 per kg. The importer sought assessment of the goods at the transaction value. The impugned order has rejected this request and has held that assessment should be at a value of Rs. 65.26 per kg. At the enhanced rate, the consignment value worked out to about Rs. 27.65 lakhs. The impugned order has confiscated the goods for misdeclaration of value under Section 111 (m) of the Customs Act. Of course, with an option to redeem the same on payment of a fine of Rs. 10 lakhs. The Order has also imposed a penalty of Rs. 2 lakhs under Section 112 (a) of the Customs Act on the appellant. There is a separate penalty of Rs. 1 lakh on the second appellant Shri Bhaskar A. Patal. The impugned order has also held that the imported goods in question are liable to additional duty of customs. The appellant is not contesting

this finding. Thus, the dispute centers around the enhancement of assessable value and actions consequent to that.

2. It is the contention of the appellants that the rejection of the transaction value for the purposes of valuation of the goods and demand of duty at an enhanced value is contrary to legal provisions relating to valuation of the goods and relevant facts of the case. It has been emphasized that, in support of the transaction value, the appellant had obtained and produced before the Commissioner the sale price of the goods from the country of origin. It is submitted that as the sale price of the Dubai trader was at a profit, it could not be objected to.

It is pointed out that the goods are of Turkmenistan origin and the Dubai dealer had purchased the goods from the Agro Industrial Complex, Buyan, Ministry of Health and Medical Industry of Turkmenistan under invoice dated 9.7.2001. It is the appellant's contention that the entire consignment purchased by the Dubai dealer had been sold to the appellant at a profit. The learned Counsel for the appellant has submitted that the standard for valuation of goods for levy of customs duty is their transaction value and that, in the present case, when the transaction value is supported by the purchase price of the trader there was no justification at all for not accepting the transaction value. The learned Counsel further submitted that contrary to the legal provisions, the impugned order has undertaken the valuation of the goods under different methods like costing, import price of spray dried liquorice extract and Internet offer price and fixed assessable value at the Internet offer price. It is the submission of the learned Counsel that the Internet offer price cannot constitute the basis for valuation. According to him, even less so in the present case, since that Internet offer price appears to be a constant one. The learned Counsel has pointed out that while this price was adopted by the Commissioner for the proceedings initiated under show-cause-notice dated 12.2.2002, the appellants' recent verification on 6.3.2002 has shown that the price is the same. A print out has also been filed in support.

3. The learned Counsel has further submitted that the adjudicating authority was in error in rejecting the sale invoice of Turkmenistan on the ground that the mode of transport shown in that invoice is Trucks while journey from Trukmenistan to Dubai

necessarily involves crossing of Persian Gulf and that it is ridiculous to suggest that the Trucks passed the Gulf. The other point made in the order about the difference in mode of packing also is not valid.

4. We have perused the records and have considered the submissions made by learned SDR also. The appellants' contention that transaction value should constitute the basis of customs valuation is in conformity with Rule 4 of Customs Valuation Rules. The item under import is a root extract. While the appellants' purchase is from a trader in Dubai, copy of purchase invoice for the goods from the supplier in Turkmenistan (Country of origin) has been produced to support the transaction value.

That supplier is the Govt. of Turkmenistan. The consignment has also been supplied to the Indian importer in full. There should normally be no objection to accept such a price. We are not able to sustain the objections raised in the adjudication order in respect of the Turkmenistan invoice. Mention of trucks as the mode of transport need not be understood as a claim that the goods were transported all the way to Dubai on Trucks. It could well be that the Truck is initial mode of transport.

5. We are not able to approve the valuation carried out in the impugned order. After considering valuation under three different methods, each yielding vastly different values of.

(b) Rs. 112 kg. (on the basis of B/E price of spray dried liquorice extract); and The impugned order has fixed the value at the Internet offer price.

That internet offer price cannot over-rule the transaction values, is well settled that there is gap between quotation and sale price is well known. That the internet offer price in question is also not reflective of actually transacted prices is clear from the fact that it has remained unchanged from the time of the show cause notice (Feb. 2002) to the present case, the import price is supported by the price from the country of origin. The seller in the country of origin is the Govt.

itself. In these circumstances, the goods were required to be assessed to duty based on the transaction value.

6. In the light of our findings above, the appeals merits acceptance in relation to the dispute relating to valuation of the goods.

Accordingly, the order is set aside inasmuch as it relates to valuation of the goods, their confiscation and imposition of penalties. The imposition of additional customs duty is confirmed. The goods shall be released to the importer appellant after collecting duties based on the declared value. The appeals are disposed of in these terms.

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