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SooperKanoon Citation : sooperkanoon.com/30581

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-08-2003

Reported in : (2003)(161)ELT382Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Ruby Mills Ltd.

Respondent : Commissioner of Customs

Judgement :

1. The question for consideration in this appeal is the valuation for the purpose of assessment of three autoconers imported by the appellant. The goods were second hand being of German manufacture and supplied from Japan. The price declared by the buyer of the goods was on the basis of the invoices of the supplier. The goods were provisionally assessed to duty as the officer who examined them expressed the view that the value was underdeclared. Subsequently, the assessment was finalised after hearing the importer who waived issue of the notice. In his order, the Assistant Commissioner, whose order has been confirmed by the Commissioner (Appeals) has held that, in the light of the failure by the importer to produce manufacturer's invoices, the value of goods should be determined by depreciating from the original value.

2. The valuation of similar goods is the subject matter of the decision of the Tribunal in Rajendra Mills Ltd. v. CC - 1997 (90) E.L.T. 68. In this decision, the Tribunal held that unless there was a basis for indicating the transaction value is

not genuine, the value would be governed by Rule 4 of the Valuation Rules. In the case before us, there is nothing to indicate that the price declared by the importer was not genuine. The examining officer's remarks only stated that the declared value "appears low as per the conditions of machines." The goods were not subjected to examination by any panel of experts. No doubt as the departmental representative contends that Rule 10(1)(b) of the Valuation Rules requires the importer to furnish the manufacturer's invoice if asked for by the proper officer. The appellant on being so asked, stated that it did not have the manufacturer's invoice. We do not see how this can be held against it. It is difficult to expect in the case of second hand goods, that the manufacturer's invoice will travel with the consignment from the first to every purchaser. In any event, there is no provision in the Act to say that in the absence of the manufacturer's invoice, transaction value cannot be accepted or is to be considered not to be genuine. There was therefore no reason for not accepting the transaction value.