

Commissioner of Customs Vs. Hatco Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-22-2003

Reported in : (2003)(160)ELT935Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Commissioner of Customs

Respondent : Hatco Industries

Judgement :

1. Hatco Industries, the respondent to this appeal, imported a consignment consisting of two models of multimeters and four models of relays. The goods were imported from China and were declared to be a Chinese origin. The multimeter XY 360 TR was declared at unit price of US\$ 1.25 and the other multimeter US\$ 0.80. Relays MY-4 MY-2 declared at US\$ 0.18, MK2P US\$ 0.20 and MK3P US\$ 0.23. The department considered that these prices are much lower than the price at which other similar goods were imported. Examination of the goods showed that the relays that they were made in Malaysia and to be Omron brand. The importer, on being asked to explain, could not give any satisfactory reason. Notice was therefore issued to the importer proposing enhancement of the value of the goods. The price of Relays MY4 and MY2 was enhanced under Rule 7 by applying the value from the sale price of such relays imported by another importer and sold in India and that of the remaining two types under Rule 8. The Additional Commissioner enhanced the value of the price, ordered confiscation of the goods with an option to redeem them and imposed

penalty.

2. The importer appealed this order. The Commissioner (Appeals) confirmed the enhancement of the value of the multimeter but struck down the enhancement of value of the relays. He also set aside confiscation order of the goods and the penalty imposed on the importer. The appeal by the department challenges those portions of the order. There is no appeal by the importer.

3. It is difficult to understand the conclusion of the Commissioner that once multimeters have been undervalued, there is no justification for confiscation or imposition of penalty. His view that the "department has not made out a case as regards valuation or ITC violation on account of wrong declaration of country of origin and therefore a caution is sufficient, in the absence of any multiplicity of offences" for setting aside the final penalty is ambiguous and difficult to appreciate.

4. We now turn to the relays. With regard to these, the Commissioner (Appeals) has said that the Additional Commissioner was in error in invoking Rule 10A, "since the Custom Valuation Rules do not provide for the same." It is not possible to understand this. The bill of entry for the goods was filed on 20th May 2002. Rule 10A came on to the statute book in 1999 and thus clearly in force when the goods were imported.

His conclusion therefore is unsustainable. The importer does not come up in appeal. There being no basis for this conclusion of the Commissioner (Appeals), this part of the order is set aside and the order of the Additional Commissioner is restored.

5. It will follow from the discussion above that confiscation of the goods and liability to penalty on the importer also arises. We have not been shown any reason as to why the quantum of penalty determined by the Additional Commissioner should be interfered with.

6. In the result, we allow the appeal, to the extent prayed for in the department's appeal and set aside the order of the Commissioner (Appeals).