

Pearless Pack Ltd. Vs. C.C.

Pearless Pack Ltd. Vs. C.C.

SooperKanoon Citation : sooperkanoon.com/31104

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-04-2003

Reported in : (2003)LC611Tri(Delhi)

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

Appellant : Pearless Pack Ltd.

Respondent : C.C.

Judgement :

1. M/s Pearless Pack Ltd., New Delhi purchased "Second-hand Offset Printing and Allied machines" at US \$ 32,100 under invoice No.052602A dated 27th May 2002 from North East Printing Machinery, Inc., USA. The terms of payment was bill for collection at sight through Indian Bank, West Patel Nagar, New Delhi. The consignment consisted of the following 4 items as mentioned in the Bill of Entry: (i)I NO. Heidelberg, 2 Color Offset Press Size 20" 1/2 X 29" Year of Mfg. 1993 Serial. No. 535537 Complete with all Accessories, Motors, Compressors and Electrical fittings Made in Germany (ii)I No. Adast Dominant 745,4 color offset press Year, of Mfg. 1993, Serial N. 10627, Size: 19"x26" Complete with all Accessories, Motors, Compressors and Electrical fittings Made in Czech Republic.

(iii) 1 No. Mandell Paper Cutting Machine Year of Mfg. 1993 Size: 115 Made in Italy (iv)I No. Ryobl 960 CD, 1 Color Mini Offset Press Year of Mfg. 1993 Made in Japan 2. M/s Pearless Pack sought clearance of the goods through Inland Container Depot (ICD), Tughlakabad under Bill of Entry No.278500 dated

6.8.2002. The invoice price was declared as the price of the goods for the purpose of assessing them to customs duty. Clearance of the second-hand machines was claimed under para 2.33 of the Handbook of Procedures-Vol.I, 2002-2007 of Import Policy, which provided for import of second-hand capital goods that are not more than 10 years old.3. Customs Authorities, ICD, Tughlakabad objected to the clearance of the goods. It was alleged that Adast Dominant, 4 colours offset press (serial No.ii of above) was more than 10 years old. It was further alleged that all the goods other than the one mentioned at Sl.No.(iii) above of had been undervalued. The appellant M/s Perless Pack contested the objections but failed. Commissioner of Customs, ICD, Tughlakabad passe Order-in-Original No. AKR/CC/ICD/TKD/109/2002 dated 23.10.2002 upholding the objections. As a result, all the goods other than the item mentioned at Sl.No.(iii) were confiscated and penalty of Rs.2 lakhs was imposed on M/s Pearless Pack. They were also directed to pay duty on the machines at enhanced values as well as to redeem them on payment of fine. This order is under challenge in the present appeal.

4. The very first contention of the appellant is that the order of valuation is contrary to the legal provisions contained in Section 14 of the Customs Act and Rule 4 of the Customs Valuation Rules as interpreted by the Apex Court. It is further contended that the finding regarding age of machine is incorrect and therefore, confiscation of the machine on that ground was also erroneous. It is further submitted that in any event, there was no misdeclaration of description or values of the goods inasmuch as the declarations truthfully reflected the transaction both in regard to goods in question and their price.

5. It is pointed out that the import is pursuant to purchase of the machines in a purely commercial transaction between strangers where price was the only consideration between the buyer and the seller and that the amounts indicated in the invoices were the full and only consideration for transfer of possession. It is further pointed out that this is a case of purchase of second-hand offset printing and allied machines on 'as is where is basis' and transaction was concluded based on inspection certificate prepared by a Chartered Engineer after inspecting the machines. The Chartered Engineer had certified to the year of manufacture, residual value and condition of the machines in question. It is the appellant's

submission that they had gone by the Chartered Engineer's Certificate while concluding the transaction and that all the declarations made by them with regard to description, age, price etc. of the machines were according to the Certificate of the Chartered Engineer and the invoice and that no information contrary to the price/description contained in these documents was in their knowledge. Nor has any such material been brought out by the revenue.

It has, therefore, been emphasized that the allegation of misdeclaration of description or values is contrary to the facts of the case.

6. The commissioner of Customs has reached a finding that the machine was of 1991 manufacture based on the fact that control panel on the machine had 1991 embossed on it. On this finding, the appellant's submission is that the control panel is an accessory and not a part of the offset press itself. It is pointed out that the year of manufacture of accessories of the printing press could not be the correct indication of the year of manufacture of printing press itself, inasmuch as accessories manufactured during a later period could have been attached to the printing press manufactured in a later year. The appellant also points out that, for the same reason, the printing press could be treated as the production of 1995 inasmuch as the ink flow attached to the printing press had the year of manufacture marked as 1995. The appellant has also pointed out that the Commissioner had wrongly assumed the printing press to be of 1991 manufacture on the basis that the machine was manufactured in Czechoslovakia and since Czechoslovakia split into Czech Republic and Slovakia in 1991, a product of Czechoslovakia would be of 1991 or earlier. The appellant has pointed out that Commissioner has made an error in assuming that this machine was manufactured in Czech Republic, as it is an Adast machine manufactured in the plant, situated in Slovakia. The appellants have submitted that the assumption regarding time and place made in the order are completely erroneous inasmuch as the split up of Czechoslovakia took place only in 1993 and not in 1991 as assumed by the Commissioner and that the appellant's manufacturing units was also located in Slovakia and not in Czech Republic. Appellants have produced a print-out from Web site www.czech.cz. which is the official site of the Czech.cz. which is the official site of the Czech Republic in support of their submission. Appellants

have also submitted that the entire controversy was the result of false and incorrect particulars furnished by M/s amit International, Delhi, India agent of the appellant's rival company.

7. After rejecting the value declared by the appellants, the Commissioner has worked out the assessable value of the machine of Adast 4 colour printer at US \$ 49,761. This has been done by taking the 1993 price of the machines at US \$ 1,65,870 CIF and allowing depreciation of 70%. The basis for 1993 price is the statement of M/s Amit International that identical machine had been sold to M/s Graphic Impression, Madras in that year and an invoice of that sale made available by M/s Amit International. However, Bill of Entry or any other evidence confirming that import or assessment of the said import at that price are not available in the records of the case. The appellant's contention on the valuation is that since Commissioner has no reason to reject the transaction value, the entire exercise of ascertaining the value of the machine in 1993 and working out its 2002 price through the method of depreciation was unnecessary and impermissible. Further, the method of valuation adopted goes contrary to the finding that the machine was of 1991 manufacture. In respect of Heidelberg Offset Press, the Commissioner's order states that the value of similar machine has been found around Rs.14.5 lakhs from contemporary records. Records referred to are purported imports at Nhava Sheva Port. The appellant raised some objections with regard to valuation of this machine also. They also point out that import cannot be treated as contemporary at all since that took place about 8 months prior to the appellants import. It is further pointed out that it is well known that price of second-hand machines vary vastly depending upon several factors like hours like of utilisation, residual life, and most importantly, market condition at the time of sale. The appellants also explained that the apprehension of the Revenue that the transaction value is too low is because of the failure to take into account the big change in the business environment after the Bombing of World Trade Center, New York on 11.9.2001. The uncertainty brought about by this development had depressed the market in general and certain people engaged in printing business in America were selling their business at low prices. It is submitted that the low price for the printing machines is the result merely of such changed market conditions and not that the appellant had in any way, misdeclared the value, after

purchasing the machine at a higher value.

8. we have perused the records and have considered the submissions made by both sides. The findings in the impugned order are clearly unsustainable. To begin with, the findings on the age of the machine (1991) and the basis adopted for valuation (1993 import) are in conflict. If the machine was really of 1991 manufacture as held by the Commissioner of Customs, it could not have been valued based on the import of 1993. In any case, both the findings cannot be correct. In fact, both are without sound evidence. The only supporting materials in support of age of the machine is that the control panel has year 1991 marked on it and that Czechoslovakia split in 1991. The appellant is right in his contention that going by the year marked on an accessory like control panel could lead to erroneous conclusions. First of all, control panel is a separate entity from the printing press. Therefore, it could have been manufactured prior to manufacture of printing press.

Secondly, the presence of ink flow, another accessory, with the marking of 1995 shows that parts and accessories are of different years and the year of manufacture of the printing press cannot be correctly determined on the basis of the years embossed on accessories. The appellants have also shown that surmise made in the order based on the assumed year of break up of czechoslovakia is also erroneous. In these circumstances, the finding that the printing machine is of 1991 manufacture and required import licence cannot be upheld.⁹ Finding on valuation also is not in accordance with the legal provisions governing customs valuation. In terms of Rule 4 of the Customs Valuation Rules, transaction value is to constitute assessable value. There is no material in the records suggesting that the transaction between the appellants and their seller took place for any consideration other than the price mentioned in the invoice. True, the price may be lower than the historical value one worked out adopting the depreciation method. While depreciation method is an acceptable way of determining the current value of assets, sale and purchase do not take place always at prices arrived at by depreciation method. Market conditions determine sale prices. More so in respect of secon-hand machinery. Appellants have offered the explanation that the uncertainties and depressed market conditions brought about by 11th September

2001 bombing of World Trade Center enabled the appellants to purchase the goods at a low price. There is nothing in law which permits discarding the transaction value merely on the ground that it is lower than the price arrived at by depreciation method or cost of production method. In fact, the law states the law states the opposite.

Transaction value should constitute assessable value, even if the transaction value is lower than the cost of production or the historical value. In any case, second-hand goods market is a highly volatile one and follows no fixed rule. In the absence of any legal provision which permits the customs authorities to discard the transaction value of second-hand goods and determine their assessable value based on depreciation method, the course adopted in the impugned order cannot be sustained. Further, the price adopted is also not one accepted for assessment by the Customs authorities. Data has not been taken from any Bill of Entry. It is from invoice made available by the agent of the competing manufacturer. Such material does not qualify to be treated as even evidence of contemporaneous import price. Import of same goods at or around the same time as the appellant's import alone could form the basis for comparison. Not another transaction in respect of new machinery, several years back. Time is the essence in business transaction. And valuation provisions in Customs law stress this.

Section 14 specifically states that value for "delivery at the time and place of importation" is to take for the purpose of valuation of imported goods. We also observe that in regard to another import of second-hand 1991 Adast Dominant Offset printing press, the Commissioner of Customs, ICD, Tughlakabad accepted, under Order-in-Original No.SKS/CC/ICD/TKD/129/2000 dated 22.12.2000, the value of Rs.10,85,600/- (while in the present case, the Commissioner has fixed the value of the machine at Rs.24,55,133/-) based on the fact that a similar machine had been imported at Patparganj, ICD at a price of Rs.12 lakhs. In an appeal filed by Revenue, we confirmed this order vide our Final Order dated 12.6.2003 in Appeal No.C/169/2002-NB(A). It is not known how the present adjudication proceedings which are subsequent to that order, missed this information and went by the data provided by an agent about a purported 1993 import at Madras, that too when import data is believed to be stored in computer and available for

reference. It is also clear from this that there is variation in the prices of second-hand Adast Dominant Offset Printing machine and the present valuation at over Rs.24.55 lakhs is not supportable. Needless to say, what is true of second-hand Adast Dominant Offset Printing press would be true of second-hand Heidelberg and Ryobi machines also.

10. In view of what has been stated above, the impugned order is set aside and the appeal is allowed with consequential relief to the appellant.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com