

Milton Laminates Ltd. Vs. C.C.

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SooperKanoon Citation : sooperkanoon.com/31218

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-13-2003

Reported in : (2003)(89)ECC198

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

Appellant : Milton Laminates Ltd.

Respondent : C.C.

Judgement :

1. M/s. Milton Laminates Ltd., Ahmedabad, is a manufacturer of laminates. They import "Melamine" for use in the manufacture of laminates. These appeals arise from a dispute about valuation of four consignments of Melamine so imported from Indonesia. While the importer declared a value ranging from 700 to 708 US \$ MT, the Customs authorities ordered the assessment of the goods on enhanced value ranging from 998 US \$ PMT to 1041 PMT. Details are available in the table below:

S.No.	B/E No.	Value declared	Value fixed by	US \$ MT CIF	Customs US \$
MT	CIF1	1162 dated 16.12.99	709	998.3442	12298 dated 29.1.2000
708		998.3443	12511 dated 10.2.2000	700	1043.1434
13222		dated 27.3.2000	700	1041.563	

2. Findings for enhancement of value recorded by the Deputy Commissioner of Customs, Kandla who adjudicated the cases is as under: I have carefully gone through the facts and evidence of the case.

There was a doubt regarding the value of the imported goods.

Therefore, the value of the goods in question is required to be ascertained with respect to the contemporary import price of the similar goods. Since the import Melamine has not been noticed at this port, references were made to the other Customs Houses and Directorate of Valuation but no information was gathered in this regard, Therefore, the department have only option to rely upon the goods which are being traded in the international market and its prices are regularly published on a weekly basis in Chemical Market Reporter. The information of value published in Chemical Market Reporter is a reputed indication of prevailing International prices which is published by an independent publisher. I do not find any reason not to accept the value published therein to form a basis for arriving at acceptable assessable value.

The international price of the Melamine at the time of importation was in the range of US \$ 0.435/LB to US \$ 0.59/LB i.e. equivalent to US \$ 957 to US \$ 975 to 1298/PMT FOB. The party has produced actual Ocean Freight for US \$ 635/- per 30 Container. This freight may be added to FOB value of consignment US \$ 20097=00 @ US \$ 957/- MT FOB and \$ @ 125% towards insurance in terms of 9(2) (ii) & (iii) of the Customs Valuation Rules, 1988. Taking the lowest FOB value prevalent in the international market for the purpose of assessment come to US \$ 998.344 PMT CIF. Party could not produce any convincing reasons, why the goods were sold to them at the value lower than the value prevalent in the international market during the relevant period.

Party also did not produce any evidence, other than the invoiced that the value in the international market prevalent at that time was the same as mentioned in their invoice. Looking into the above fact, I do not accept the invoice value." 3. Appeals were filed before the Commissioner (Appeals), Ahmedabad against that above orders. They were rejected. Hence the present 4. The contention of the appellant is that the assessment orders passed by the lower authorities are contrary to the specific legal provisions on the subject contained in Section 14 of the Customs Act, 1962 and Rule 3 & 4 of the Customs Valuation Rules 1988. It is also submitted that the impugned order is contrary to the law laid down by the Apex Court in the case of Eicher Tractors Ltd. vs. Commissioner of Customs, Mumbai-[2000 (122) RLT 321 SC]. They point out that the imports were purely commercial

transactions with the Indonesian supplier and prices represented the whole and sole consideration. They submit that in such a case, the goods were liable to be assessed at the appellant's transaction value. It is their contention that according to Section 14 (1) of the Customs Act, assessable value is to be determined on the basis of international sale price. Further, Rule 3 (1) provides that "the value of imported goods shall be the transaction value" and according to Rule 4 (1) of Valuation Rules "the transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of rule 9 of these Rules". During the hearing of the appeals, learned Counsel for the appellants pointed out that the Customs authorities have not brought out any material casting any doubt that the "price actually paid or payable for the goods" was more than the amount mentioned in the sale invoice. Instead, an order of enhancement of price has been passed noting that "there was a doubt regarding the value of the imported goods." However, no reason for doubting the value has been stated. Further, the appellant had also pointed out that another import from Korea had taken place at Nhava Sheva Port at the rate of US \$ 730MT, but no note is being taken of it. The learned Counsel pointed out that it would appear from the order of adjudication that the only reason for doubting the invoice price was the fact that Chemical Market Reporter, a Journal has indicated higher transaction values for these goods in the international trade. It is the submission of the appellants that reporting of a higher value in Market Reporters is no ground for enhancement of value. According to him, it is settled law (*Eicher Tractors Ltd. vs. Commissioner of Customs, Mumbai* (surpa)) that transaction value is "confined to the particular transaction (i.e.

to the goods under assessment)" and not transaction by other importers.

The learned Counsel also drew our attention to this Tribunal's decision in the case of *Prabhu Dayal Prem Chand vs. C.C., New Delhi* [2002 (53) RLT 891 (CEGAT-Del)] holding that transaction value cannot be rejected on the basis of price quoted in Bulletin /Publications, London Metal Exchange Bulletin in that case. The appellants have also complained that even though the impugned order mentions prices reported in the Chemical Market Reporter as the basis for enhancement of

the assessable value, copy of the Chemical Market Reporter was not made available to the appellant during the proceedings or they were given an opportunity to make their submissions on those values. According to the appellant's counsel, this is a clear violation of principles of natural justice.

5. We have perused the records and have heard the learned JCDR. We find no legal or factual basis to support the valuation ordered by the lower authorities. The orders express "doubt" about the transaction value. No basis, other than the price reported in the Chemical Market Reporter, seems to be available to justify this doubt. The appellant is an industrial user who has imported melamine in large quantities (each consignment is about 20 MT). There is no evidence available casting doubt on the appellant's transactions. The appellant had also brought to the attention of the Revenue Authorities and import in December 1999 at Nhava Sheva Port at the rate of 730 US \$ PMT. The appellant's prices are somewhat close to that price, which was for export from Korea to India. This should have reassured the Customs authorities that the declared value represented commercial price. Further, it is settled law that transaction value cannot be rejected except for the reasons mentioned in the Valuation Rules. No such ground exists in the present case. A mere doubt emanating from journal reports is no ground.

6. It is equally well settled that prices indicated in price bullentins is no basis for rejecting transaction values. (Prabhu Dayal Prem Chand vs. C.C., New Delhi - [2002 (53 RLT 891 (CEGAT-Del.)). In the present case, the proceedings have also been concluded in an unjust manner insmuch as the material (Chemical Market Reporter) relied upon by the Revenue is not made available to the appellants and their explanation obtained before passing the order. It is clear that the impugned proceedings were clearly unjustified and illegal. For the reasons stated above, the impugned orders are set aside and the appeals are allowed with consequential relief to the appellant.