

K.V. Impex Vs. Cc, Icd

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-18-2003

Reported in : (2003)(157)ELT491TriDel

Judge : K Usha, M T K.D.

Appellant : K.V. Impex

Respondent : Cc, Icd

Judgement :

1. The instant appeal of M/s K.V. Impex is directed against the order of Commissioner of Customs (Appeals), (Delhi, New Customs House). The brief facts of the case are that the appellant had filed Bill of Entry No. 11329 dated 1.11.2000 for clearance of "Velour" classifiable under Tariff Heading 6002.43 (hereinafter referred to as 'the goods') imported from China and declared the value of goods as Rs.4,70,335/- (CIF). The appellant has declared the Invoice Value as US \$ 0.5 per mtr, which worked out to approximately US \$ 1.8 per Kg. At the time of filing the Bill of Entry, the appellant has requested for first check examination to ascertain the correct classification and rate of duty.

On first check examination, the goods were found to be "Pile Fabric" of different colours; the total quantity was also found to be short by 898 Kgs. (10 packages). Since "Pile Fabric" is classifiable under Tariff Heading 6001.92 and also that the value has been declared on the lower side, it appeared that the appellant had misdeclared the classification, valuation and quantity of the goods. "Pile Fabric"

was assessed @ US \$ 0.84 per yard of US\$ 3.06 per Kg. on the basis of contemporaneous import of similar goods from the same country of origin i.e. China, by another importer. The appellant vide their letter dated 13.11.2000 requested for waiver of show cause notice; they however requested for personal hearing which was granted on 20.11.2000. The adjudicating authority vide the impugned order held that the description given in all documents including the Bill of Entry is commercial description and not the technical description to mislead the department and that as regards value of the goods which was taken on the basis of contemporaneous import of similar goods from the same country of origin, the appellant failed to produce the manufacturer's invoice. On the question of value being taken as US \$ 3.06 per Kg., the appellant stated that they are not clear how the other importer has imported at a higher value. The adjudicating authority vide impugned order assessed the goods at US \$ 3.06 per Kg. under Tariff heading 6001.92 and charged the duty at the appropriate rate. For misdeclaration of value, classification and quantity of goods, the adjudicating authority confiscated the goods under Section 111 (m) of the Customs act, 1962 but gave to the appellant an option to redeem the same on payment of redemption fine of Rs. 1 lakh (Rupees one lakh only) and also imposed penalty of Rs.25,000/- (Rupees twenty five thousand only) on them.

2. The said order was challenged before the Commissioner (Appeals) alleging that the value enhancement at US \$ 3.06 per Kg. is without any basis. The department has not supplied the copy of invoice of the other importer (Relied upon document) and, therefore, enhancement of value of goods is without any basis. While passing the impugned order Id.

Commissioner of Customs (Appeals) observed that "department has relied on contemporaneous invoice for similar goods from the same country of origin, similar GSM quality, etc. the contents of which were made known to the importer and discussed with him at the time of personal hearing.

I therefore find no reason to accept the appellant's contention that the department has enhanced the value without any basis." Accordingly, the appellant's appeal before the commissioner was rejected and hence the appeal to the Tribunal.

3. Heard the Id. counsel and also the DR. During the hearing the Id. Dr produced a few specimen copis of invoices of "Pile Fabrics". The said invoices related to the supply from Taiwan. Imported goods are of Chinese origin. No copy of the invoice containing the price of 0.84 US \$ per yard equivalent to US \$ 3.06 per Kg. has been produced before us.

The appellants has agitated this point before the Commissioner (Appeals) and he has totally glossd over the issue. It is, therefore, not known as to how the said price can be applied to the present imports in the absence of establishing a case that the price relates to the price of comparable goods. The same difficulty is experienced in respect of copies of the invoices that have been produced dring the hearing. In the absence of any other colateral evidence justifying rejection of transaction value orders passed by the lower authorities cannot be sustained. In the circumstances, we set aside the order impugned. The appeal succeeds and the same is allowed.

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