

Methodex Systems Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-28-2003

Reported in : (2004)(91)ECC600

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

Appellant : Methodex Systems

Respondent : Commissioner of Central Excise

Judgement :

1. In this appeal at the instance of the importer the issue raised is whether the Customs authorities were justified in enhancing the assessable value of currency counting machine imported by the appellant.
2. The appellant as part of its trading business imported currency counting machine (hereinafter referred to as CCM) from two overseas suppliers, namely, M/s. Heryn Yung of Taiwan and M/s. Jaewoo Corporation of South Korea. These machines are of two models, namely, Floor Model and Desk Top Model. Initially the appellant imported CCM from M/s. Heryn Yung @ USD 900 from April, 2000 to September, 2000. For the period October 2000 till March 2001 the price was reduced to US \$ 850 in view of the increase in the volume of import. Since M/s. Henry Yung was not able to supply entire requirement of the appellant, the appellant imported 42 number of CCM from M/s. Jaewoo Corporation at a unit price of 920 US \$ under Bill of Entry dated 26-2-2001. Since the price quoted by M/s, Jaewoo Corporation was very high the appellant reverted to M/s. Henry Yung.

Under invoice dated 18-7-2001 100 numbers of Floor Model of CCM was purchased @ 830 US \$ and 10 numbers Desk Top Model of CCM at the same rate.

3. In the meanwhile the appellant took up negotiations with M/s. Jaewoo Corporation for reducing the price of CCM. The learned counsel for the appellant took us through the correspondence between the parties starting from letter dated 15-5-2001 onwards. By letter dated 3-7-2001 M/s. Jaewoo Corporation informed the appellant that they are ready to offer DHP-IF Model at US \$ 790 and DHP-ID Model at US \$ 750 subject to the condition that order will be placed for minimum of 100 machines, that the payment would have to be made through an irrevocable letter of credit and that the freight and insurance charges would have to be borne by the appellant. To this offer the appellant replied placing an order for 150 machines (75 Nos. of each type). They also made a request to bring down the price of DHP-IF to 750 US \$. Machines thus ordered were covered by invoice dated 14-9-2001 and were imported vide Bill of Entry No. 804 dated 17-9-2001.

4. Thereafter, the appellant made further negotiation with M/s. Henry Yung and imported 120 numbers of Floor Model of CCM @ 790 US \$ under Bill of Entry No. 983 dated 15-11-2001. In reply to a query memo dated 15-11-2001 the appellant informed the department that the unit price of 790 US \$ per machine was negotiated on the basis of the price of earlier consignment imported from M/s. Jaewoo Corporation under invoice dated 14-8-2001 which was cleared through ICD Pithampur under Bill of Entry No. 804 dated 17-9-2001. They also made available copy of the letter addressed by M/s. Henry Yung to the effect that they had offered the price of 790 US \$ subject to the condition that the appellant would not deal with any other manufacturer of CCM, that the appellant would buy 600 machines and that the price would be FOB Taiwan and supply would be strictly against receipt of irrevocable letter of credit. On the basis of the above explanation department accepted the assessable value of Floor Model CCM as 790 US \$ per unit.

5. The appellant has given details of further negotiations which they had both with M/s. Henry Yung as well as M/s. Jaewoo Corporation.

Pursuant to the argument arrived at between the parties the appellant has imported first consignment of 100 numbers of DHP-IF Model of CCM @ 780 US \$ per piece and 20 numbers of DHP-ID-1I CCM @ US \$ 620 (without O.K. Stamp unit) from M/s. Jaewoo Corporation under Bill of Entry No.24-12-2001. The appellant has also stated during the relevant period M/s. Jaewoo Corporation supplied small quantity of 10 to 12 machines to M/s. Kores India Ltd. at price of 784 US \$. Their offer to the appellant at a lesser price was the result of prolonged correspondence between the parties and the appellants offer to buy large quantities.

The arrangement which the appellant had arrived at with M/s. Jaewoo Corporation resulted in M/s. Heryn Yung also to offer @ 620 US \$ per unit. Copy of their letter dated 18-12-2002 is made available. The appellant also pointed out that during the relevant period there was downward trend in the price of CCM even in the domestic market. The appellant's own sale realization had dropped by 15 to 20%. In support of the above contention invoices are also produced by the appellant.

Chinese manufacturers had also by the time entered into export into India and small quantities were being purchased by some companies like Godrej on a negotiated price in the range of US \$ 600 to 700. The appellant had obtained a contract from Punjab National Bank for supply of Desk Top CCMs @ Rs. 70,910.00 with two years free warranty and Rs. 75,000/- with three years free warranty respectively. It was under these circumstances, the appellant had to bargain with the supplier's for reducing the price.

6. The authorities below had taken the view that discount of 13.8% claimed by the appellant is not acceptable as it is abnormally high as internationally acceptable discount was only 5.35% to 8.7% and that the appellant did not produce the price list of suppliers in respect of the discount of 13.88%. Secondly, it was alleged that discount of 13.88% is not acceptable on account of reduction in international prices of CCM as the said reduction was in the range of up to 5% only. The contention of the appellant that price of CCM was reduced in the domestic market from Rs. 1,15,000/- to Rs. 1,10,000/- and Rs. 95,000/- to Rs. 90,000/- is also not accepted by the department. The appellant itself had sold CCM @ Rs. 1,00,673/-.

Department took the view that taking the average price of CCM as Rs. 1,06,700/- sold by the appellant and working on that basis, the assessable value of CCM imported by the appellant comes out to US \$ 732 per machine (with O.K. stamp) and unit price of CCM (DHP-ID) without O.K. stamp unit would be 720 US \$ per machine. The appellant would contend that there is no merit in the view taken by the department that 13.8% discount is unacceptable as quantity discount.

From the letters/invoices/price lists of other manufacturers M/s. Henry Yung, M/s. Kobell Limited, M/s. Tay Chian and Cummins International Corporation, USA, it can be seen that offer of discount has gone up to even 33%. The appellant had given all the details regarding the protracted negotiations which it had with M/s. Jaewoo Corporation and the resulting reduction in the price. There was no reason to refuse to consider such regular trade practice.

7. The appellant would further contend that discount 13.88% was granted to the appellant not only on the basis of the reduction in international prices. It was as a result of several factors, namely, bulk purchase, reduction in international prices, decrease in domestic prices and negotiations. Appellant also challenges the finding that decrease in its price in domestic price is not acceptable. It is pointed out that during the period considered by the department sale price had come to a minimum amount of 88,000/-. Several pieces of CCM were sold in the price range of Rs. 90, 000/- to Rs. 95,000/-.

According to the appellant, the Department had committed an error in taking monthly average price of CCM. It is submitted on behalf of the appellant that action of the authorities in directly going to Rule 7 of the Valuation Rules without first going through Rules 5 and 6 sequentially, is incorrect.

8. The appellant would submit that there are no circumstances as envisaged by law available in this case which would justify rejection of the transaction value by the authorities.

9. After hearing both sides we find that there is merit in the contention raised by the appellant that Revenue has not been successful in making a case for rejecting the transaction value declared by the appellant. In the impugned order reliance is

placed on the Bill of Entry No. 804 dated 17-9-2001 under which the appellant imported 75 numbers of CCM DHP-ID at a price of 750 US \$ per piece from M/s. Jaewoo Corporation, South Korea to reject the transaction value declared by the appellant @ 620 US \$ under Bill of Entry dated 24-12-2001 and subsequent Bills of Entry dated 11-4-2002, 4-5-2002, 17-5-2002, 14-6-2002, 15-7-2002 and 5-8-2002. A total amount of Rs. 10,46,136/- was the differential duty recoverable from the appellant. It is true that in respect of 75 numbers of CCM DHP-ID covered by Bill of Entry dated 17-9-2002 the appellant had paid price @ 750 US \$ per piece. But the appellant has explained in detail with reference to supporting documentary evidence as to how it could get the price reduced. There were protracted negotiations by correspondence as well as in person between the suppliers and the appellant. As a result of such negotiations, they came to an understanding that the appellant would purchase minimum 600 pieces of CCM per year from the suppliers. It is also seen that certain modifications were effected in the machine, which would reduce the cost without affecting its efficiency. On going through all those materials we are of the view that such negotiations and resultant agreement are part of regular commercial transaction. It cannot be the reason for doubting the correctness of the transaction value declared by the appellant.

10. The Revenue has taken the view that a discount of 13.8% is unacceptable. This view is also not based on materials, which could be accepted. The appellant had pointed that higher percentage of discount has been granted by other parties like M/s. Kobell Limited, England and M/s. Taychain Technology, USA. It is also relevant to note that during the period in question there was downward trend of price in domestic market also. There is no allegation of extra commission or benefit accruing to the seller from the appellant or unaccounted payment being made by the appellant to the seller. The objection raised by the Revenue that the appellant had failed to produce manufacturer's invoice is also without any basis. The appellant had produced letter dated 2-3-2001 addressed by the manufacturer, namely, M/s. Donghee Industrial Company Limited which would go to show that M/s. Jaewoo Corporation was their partner and was exporting their products to India and other countries. In the above circumstances, Revenue cannot take the stand that there would be another manufacturer's invoice which has to be produced by the appellant.

11. A letter dated 18-12-2002 from M/s. Henry Yung Company Ltd. a copy of which is made available before us would show that they were also pre-pared to quote the price per machine as US \$ 620. The learned counsel appearing on behalf of the appellant brought to our notice a Bill of Entry dated 14-8-2003 whereunder currency counting machine Model DHD-ID was imported from M/s. Jaewoo Corporation @ 600 US \$ per unit.

12. Taking into consideration the entire facts and circumstances of this case, we are of the view that there are no sufficient grounds in this case which would justify rejection of the transaction value declared by the appellant. In the result, we set aside the order impugned and allow the appeal. There will be a direction to release the bank guarantee submitted by the appellant forthwith.

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