

Computility Computers Systems Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-11-2003

Reported in : (2003)(158)ELT462Tri(Mum.)bai

Judge : A Wadhwa, S T S.S.

Appellant : Computility Computers Systems

Respondent : Commissioner of Customs

Judgement :

1. The appellants imported one IBM 5360 (system-36 computer), one IBM Printer, one IBM Matrix Printer, and 23 Display units which were supplied by M/s. Mega K. Co., USA and were shipped from Netherland. The invoice value was f.o.b. US Dollars 78700/- and actual freight and insurance as applicable, the c.i.f. value declared was Rs. 10,00,857/-, Bill of entry was filed on 26.10.1985 at Air Cargo Complex, Mumbai for the clearance of above said system.

2. The goods were examined twice, first when the Customs officer in the Import Cargo Shed had conducted the mandatory examination and second time by an expert from M/s. CMC Ltd., the Government of India undertaking and following two objections were raised- (i) IBM Matrix Printer a part of the goods under import was old and used.

(ii) The value declared was low. Reliance was placed on an import of a similar model imported by Bank of America, Mumbai at the f.o.b.

value of US dollars 98,140.40 and the value therefore should be worked out to Rs. 11,93,484.20/- 3. Proceedings were after communicating the said objection and on waiver of notice was therefore initiated by the Collector of Customs.

After considering the materials on record the confiscation of the goods imported in this case under the provisions of Section 111(d) and (m) of the Customs Act, 1962 was ordered along with an option to clear the goods on payment of a fine of Rs. 6 lakhs from one month of the date of this order dated 23.04.1986. The importer complied with this order cleared the goods on payment of duty on the enhanced value and fine.

Thereafter they had filed this appeal.

4. After hearing both sides and considering the matter on record, it is found- a) The Collector has erred in considering the invoices in the case of imports made by Bank of America from Bank of America, Hongkong, as evidence, for valuation under Section 14 of the Customs Act.

These invoices are not for comparable goods, as system, sold by IBM World Trade Corporation, Hongkong to Bank of America, Hongkong, who have sent the goods to Bank of America, Bombay at the domestic price for sale in Hongkong. The quantities and configurations are different in the two imports, while there are 23 display units by the present appellants. The invoices are for local sale in Hongkong and not invoices for sale in the course of international trade.

Local sale invoice would include local profits levies including opportunity costs and would not indicate inter national export trade prices. The submissions of the appellants that Section 14(1)(a) of the Customs Act stipulates valuation of the imported goods shall be deemed to be the price at which said or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation i.e. Mumbai in international trade ordered in this case, and that the sale price from a dealer in Hongkong to a buyer in Hongkong cannot be accepted has force. These invoices only represent value for custom purposes of a computer system sent by Bank of America, Hongkong to their branch in Mumbai and are not an acceptable evidence of value of contemporary comparable imports.

Bank of America does not deal in Computer System nor do they manufacture the said IBM System. Having purchased the system in the course of local sales and passed it on to the local branch. That cannot be taken for valuation.

"According to the well known price list known as Data Source, the value of the imported goods works out to a figure of Rs. 17,42,4949/-." However, he does not find and/or explain why he is not relying on the price. The appellant's submission, that the very fact that there is a difference of Rs. 5,06,029/- between the Bank of America price and Data Source price, would show that the computer systems are being trade and offered at a substantial discount was evidence was available on record. This would meet and confirm what the appellant submitted before the learned Collector as regards the same computer system to be offered by different suppliers at different prices, depending upon the trade conditions was a relevant factor to the determination of the valuation in this case. In view of the fact that the present goods have been imported from Netherland and the Bank of America imports are from Hongkong, the two imports, for valuation, cannot be of comparable goods. The findings of the Commissioner that the evidence were for all together different goods. The submission of the importers as regards price variations would itself lead to uphold the importer's submission that the Bank of America Sale which is backed by warranty and includes installation charges, whereas in the case of the present import there is no warranty and installation are factors which would explain and cannot be ignored and they cover the difference of approximately Rs. 2,36,063/- between the two values declared and now being determined.

c) When goods are not in same quantity and cannot be compared and the value difference have a rational explanation loading of value as arrived at cannot be upheld. d) As regards the allegation of contravention of para 58(2) of the Import Policy 1985-88 read with ITC Public Notice No. 7/85 that aspect of objection was never communicated to importers. Therefore the Collector's findings is travelling beyond the charges. It is found that the learned Collector has come to findings- "Further from the publication Computer Price Guide, it is seen that I. B. M. System 36(B-24) has a basic memory of only 512K and can support upto 400 Megabyte disc drive. For these reasons the computer system imported by the respondents

cannot be deemed as covered under as considered".

It is found that importers had requested for re-examination of the goods which was not acceded and there is no report to hold that the Collector's finding as regards the memory could be supported on facts in this case. In any case, the Learned Collector's finding that System could support a disc drive upto 400 MB and para 58(2) of the policy only requires an aggregate disc memory capacity of not less than 300 MB which indicate that the goods would be covered for OGL imports.

e) Assistant Commissioner's Re-examination report as regards the finding that the 'printers were old and used'. It is the importer's contention that the first examination had been on 17.03.1986 by the officer where it was only noted "IBM 5256 Matrix Printer with stand" and in examining the CPU it was observed "IBM 5360 System - 36 S/No. 4412986" and on 31.03.1986 when the goods were re-examined the following words were endorsed on B/E- On a perusal of the said imports even from the photocopies it is found there is force in the appellant's submission that this has been written in different ink and the examination has been conducted by the officers other than Assistant Collector. Therefore, the submission that the initial examination report dated 17.03.1986 "appears to be old" in the report on IMB 5256 Matrix Printer and 'on carton B-24' against the report regarding IBM 5360 System - 36 which are in the nature of interpolations, can be clearly observed by the facts placed in the file, therefore plea being made of bias in the examination and with tampering with the report has to be upheld. Therefore the Collector's finding in this regard as also his findings on M/s. CMC Ltd. Report, cannot be upheld especially when importers request for the re-examination was not permitted by the Collector. The burden of proving "old and used" was on the department and that has not been discharged.

f) When valuation loading and 'old and used' nature of a part of import as alleged cannot be upheld, there is no case or cause to uphold the liability to confiscation under Section 111 (m) and the same is required to be set aside.

g) The capacity entered has to be established to deny the imports under OGL, that has burden on the department is not discharged, as regards the value declared worked at Rs. 10,00,857/- would itself indicate that there was non 'mens-rea' to

undervalue or mis-declare.

The confiscation under Section 111(d) is there not upheld and is required to be set aside.

h) The learned Collector has found reasons and ordered confiscation of the said goods under Section 111 (d) and (m) but has refrained from imposing the penal liabilities under Section 112 of the Customs Act, 1962. This would itself indicate and confirm the plea of bias being made by the appellants against the departmental officers of they somehow obtaining confiscation. We leave it at that.

5. The valuation and the confiscation is not upheld. The order impugned is required to be set aside with consequential benefits.

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