

Globe Traders Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-15-2003

Reported in : (2004)(166)ELT92Tri(Mum.)bai

Judge : J Balasundaram, A M Moheb

Appellant : Globe Traders

Respondent : Commissioner of Customs

Judgement :

1. The order filed against the order of the Commissioner (Appeals) who upheld the order of the lower authority.
2. The facts are that the appellant sought to export two consignments each of 2500 gross of brass nipples for stove No. 3. The value declared was Rs. 3,60,000/- at the rate of Rs. 12 per dozen C & F. The draw back rate on the export goods is 22% of the FOB value. The total draw back claim was for Rs. 78/760/- the export goods were made out of castings and not out of extruded brass rods. Market inquiries in regard to the value declared reveal that the value of the goods would not exceed Rs. 3/- per dozen as against Rs. 12/- per dozen claimed by the party. The market inquiries also revealed that brass nipples for stove No. 3 if made out of the castings would range between Rs. 26/- to Rs. 36/-per gross. During the course of investigation it was found that the appellant purchased these goods from M/s. Areef Brass Metal Works and M/s. Krishnaraj Metal Industries through M/s. Sevak Stove Industries.

The department's allegation was that the goods were over valued by four times (Rs. 12/- per dozen) as against Rs. 3/- per dozen which is the correct price for the goods and by doing so the appellants sought to claim more drawback than what would be otherwise admissible to them.

The appellants, it was alleged over valued of the goods. The original authority imposed a penalty of Rs. 5,000/- on the appellant in respect of each shipping bill (R. 10,000/- in all). He further ordered that the exporters claimed for drawback be reduced and drawback sanctioned taking the value as Rs. 3/- per dozen. The appellants preferred this appeal against this order of the original authority. The Commissioner (Appeals) upheld the lower authorities findings.

4. When shipping bill is filed under a claim for draw back the department can legitimately go into the valuation aspect for the purpose of determining whether the exporter is eligible for the draw back claim made in the shipping bill. This is particularly so when the draw back is fixed on advalorem basis. The department conducted market inquiries and found that the goods in question made out of castings were available in the market at Rs. 3/- per dozen. The exporter's claim is for Rs. 12/-per dozen. The value declared is four times more than one shown in the pricelist procured by the department. The original authority has also examined the goods while determining the value and found them to be not of any special quality. The price list produced by the appellants before original authority did not reflect the contemporaneous pricelist for the same goods. Further the original authority has observed while rejecting the price lists of M/s. Prabhat Udyog Ltd, and Master Industries produced by the appellant before him that it was not brought out in that the price shown in the above pricelists were for the same or similar goods under export. He rejected those pricelists as evidence to establish the declared prices in the shipping bills. The original authority also observed that the pricelists of M/s.Optimoher Industries the largest exporter of brass nipples for stoves, reflected a price of Rs. 2/- per dozen. Even though the appellants claimed that they have purchased the goods under export from M/s. Areef Brass Metal Works the latter at one stage stated that they did not have any business dealings with M/s. Globe Traders, the appellants. The Commissioner appeals therefore rightly observed that the appellants FOB value was extraordinarily high and upheld

the order of the lower authority.

5. While upholding the penalties, the Ld. Appellate Commissioner observed that over-invoicing of export goods for the purpose of obtaining higher drawback is punishable inasmuch as the material particulars shown in the shipping bill did not tally with the goods in question. We uphold his findings in this regard.

6. A penalty of Rs. 10,000/- was also imposed by the lower authority and confirmed by the Commissioner (Appeals). We observe that the appellants were denied the excess draw back claim to them. Further penalty of Rs. 10,000/- is excessive and not warranted; we set aside the penalty imposed on the appellant.

7. Thus the appeal is partly allowed inasmuch as the penalty is set aside.

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