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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-28-2004

Judge : J Balasundaram, M T K.D.

Appellant : Exide Industries Ltd.

Respondent : Commissioner of Customs

Judgement :

1. For reasons recorded below, we allow the application for stay of operation of the order of the lower Appellate Authority and proceed to hear and decide the appeal itself with the consent of both sides.

2. The appellants herein filed 2 Bills of Entry in November, 2002 for clearance of antimony metal bigots of 99.65% minimum purity of Chinese origin. The department entertained a reasonable doubt regarding the declared value of USD 2425/2450 PMT. It was noticed that there were contemporaneous imports at the rate of USD 3570 PMT and further it was noticed that the LME price during the relevant period ranged between USD 3000 -3200 PMT. The Dy.Commissioner determined the value of the imported goods at the rate of USD 3000 PMT cif on the best judgment principle under Rule 8 of the Customs Valuation Rules, 1988 read with Section 14 of the Customs Act, 1962, keeping in view that the appellants might have succeeded in obtaining a better price on negotiation. Against the enhancement of value, the importers preferred an appeal before the Commissioner(Appeals) who while accepting the importers' contention that LME price cannot be the sole basis for rejection of the transaction value, remanded the

case for disclosure to the importers of details of contemporaneous imports as he found that the contemporary imports at higher value will sufficient to examine the value of the goods in question. Hence, this appeal.

3. The appellants' contention that the Commissioner(Appeals) has travelled beyond the order challenged before him in holding that contemporaneous imports are relevant, for the reason that the Dy.Commissioner had only relied upon the LME price, and that therefore, the Commissioner(Appeals) ought to have allowed the appeal and not remanded the case for observing the principles of natural justice by furnishing details of contemporaneous imports, is without substance as we find that LME price as well as price of contemporaneous imports were relied upon for rejecting the declared value and for loading the value of the goods. However, we agree with the appellants that the Commissioner (Appeals) had no power to remand the case as such power was no longer available to him after the amendment in the law. In the above circumstances, we set aside the impugned order but remand the case for fresh decision to the Commissioner (Appeals) who shall furnish all details of contemporaneous imports of similar/identical goods relied upon by the Department to the; appellants and extend a reasonable opportunity of hearing to them before passing fresh orders.

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