

Seba International Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-09-2004

Reported in : (2004)(93)ECC162

Judge : Author: C Nair

Appellant : Seba International

Respondent : Cc

Judgement :

1. The appeal is directed against the order of confiscation of 18 photocopy chassis imported at Chennai Port. Declared value was 150 Canadian Dollars per piece. The goods were also declared as 'used'. The Customs Authorities did not accept the declared value and got the value estimated by a Chartered Engineer, who fixed the value at 1000 Canadian Dollar per piece. Based on the enhanced value so fixed and the legal provision that machines more than 10 years old cannot be imported without licence, the authorities confiscated the consignment and imposed penalty on the appellant. The original penalty of Rs. 90,000 so imposed was reduced by Commissioner of Customs (Appeals) to Rs. 50,000. Commissioner (Appeals) also reduced the fine from Rs. 1.8 lakhs to Rs. 1.10 lakhs.

2. In the present appeal, the submission of the learned Counsel for the appellant is that the method of valuation adopted is grossly erroneous.

He has taken us through the report of the Chartered Engineer and has shown that Chartered Engineer has noted that the machine was used and partly reconditioned; it was of non-popular brand; it was not current model and is more than 10 years old, Chartered Engineer has also put the year of production as 1989 based on the code. Despite all these, the value was fixed at Canadian Dollar 1000 on the estimated price in 1989 of Canadian Dollar 2500 per piece for full machine. It is the learned Counsel's contention that the historical method of valuation adopted by the Chartered Engineer is not a reliable method at all for determining current traded value. It is his submission that goods should be valued at the current market value and not on historical basis. Learned Counsel has further submitted that though the Chartered Engineer has stated that the goods appeared to be of 1989 model, no particulars of model, or manufacturer has been mentioned by him.

Learned Counsel has also pointed out that no valid reason has been given by the lower authority for rejecting transaction value.

3. We have perused the records and have heard the learned SDR also. The valuation mode does not appear to be reliable. The Chartered Engineer has not indicated as to what would be the current market value of the goods, based on the sale price prevailing for identical or similar goods. No basis has also been mentioned as to how the price was estimated at Canadian Dollar 2500 in 1989. Clearly, the valuation suffers from serious defects. In the absence of model, manufacturer or comparable market price, basic features etc. valuation does not appear to be having a reliable basis. In the circumstances, we are in agreement with the appellant that the valuation undertaken by the Customs Authorities cannot be upheld. However, the charge of importing old machines without import licence has been correctly made. According to the Import Policy, second-hand goods which are more than 10 years old require import licence. Appellant has not cared to obtain such a licence. For this reason, consignment was liable to confiscation.

4. In view of the findings reached above, the enhanced value fixed by the Customs authorities is set aside. However, the confiscation of the goods for want of import licence is upheld. Redemption fine is reduced to Rs. 15,000 (rupees fifteen

thousand only) and the penalty is reduced to Rs. 10,000 (rupees ten thousand only). It is ordered that the goods be reassessed at the declared value and duty levied. Excess duty paid at the time of redeeming the goods shall be refunded to the appellant.

So too, redemption fine and penalty collected in excess of the amounts fixed above. Appeal is partly allowed in the above terms.

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