

Commissioner of Customs and Vs. Bobsons Corporation

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-11-2004

Judge : S T S.S., K Kumar

Appellant : Commissioner of Customs and

Respondent : Bobsons Corporation

Judgement :

1. Revenue has filed this application for stay of Commissioner (Appeals)' order on the grounds that .

(i) Commissioner (Appeals) erred in not appreciating that 50% of the goods were clearly serviceable in nature and not scrap and that 50% of the goods were not serviceable and is admitted by the respondent; (ii) The Commissioner (Appeals) should have held that respondents' admission of 50% goods of serviceable nature clearly established the misdeclaration since the goods were declared as scrap; 2. After hearing both sides, and considering the materials, it is found that the Commissioner (Appeals) has come to the following conclusion: "5. In the above report, it has been stated that the High Speed Steel Scrap contains mainly broken, damaged and rusted parts of used drilling components and that most of the parts are broken bits/pieces of used drilling machinery which is mostly damaged and unusable. Having said that, the valuers further say ".... However being on the conservative side, I consider 50% of the consignment as serviceable scrap and the balance 50% as unserviceable scrap." The second part of the report treating the consignment as 50% serviceable and 50% unserviceable is in total

contradiction to the first part of the report which says that most of the parts are broken bits/pieces of used drilling machinery which is mostly damaged and unusable. Once having said that most of the parts are damaged and unusable it is not understood as to on what basis the valuers have reported half the consignment is serviceable scrap and the other half is unserviceable scrap. In fact on the basis of the first part of the report where most of the parts on inspection were found to be damaged and unusable, the entire consignment ought to have been treated as damaged and unusable and therefore as unserviceable scrap. Moreover the second part of the report says "...however being on the conservative side...", which means that the report is given on a conservative estimate and therefore is not based on actuals. I accordingly find that the report of M/s Anand Kulkarni & Associates in treating half the consignment as serviceable and other half as unserviceable is based on presumption and not on the factual inspection done by them. Thus, this report of M/s Anand Kulkarni & Associates cannot be accepted as a factually correct report. The entire case of the department relating to misdeclaration is based on this report. As the said report is factually not correct, there is no merit in the allegation of department with regard to misdeclaration. I also find that the samples of the consignment were also got tested from M/s SGS India Pvt. Ltd whose report states "Based upon test results it is certified that the samples belong to HIGH SPEED STEEL TOOLS - SCRAP category". This report of M/s SGS India Pvt Ltd is more categorical in as much as it clearly certifies that the samples belong to High Speed Steel Scrap category. Therefore the report of M/s S.G.S. India Pvt Ltd is clearcut and thus more reliable.

6. The Adjudicating Authority has also enhanced the value of the consignment on the ground that the value of the serviceable scrap, which constitutes 50% of the consignment, should be treated as Rs. 55/-kg based on the valuation done by M/s Anand Kulkarni & Associates. As already discussed above since the said report of M/s Anand Kulkarni & Associates treating half the consignment as serviceable scrap, cannot be relied upon, it follows that the valuation done on that basis also cannot be sustained. Even otherwise the department has not established the absence of the special circumstances as particularised in Rule 4 (2) of Customs Valuation Rules, 1988 so as to reject the transaction value. The Supreme Court in the case of Eicher Tractors Ltd v. CC Mumbai [2000 (122) ELT 321 (SC)] has

clearly held that in the absence of the exceptions in Rule 4 (2) it is mandatory for customs to accept the price actually paid or payable for the goods in the particular transaction. As the main allegation of misdeclaration is not sustainable and also as the guidelines laid down in Eicher Tractors case have not been followed, the rejection of transaction value is not sustainable. There is therefore no -merit in the stand of the department. The declared value of the appellants therefore is to be accepted." 3. The above findings, prima facie indicate that the question of classification of High Speed Steel Scrap and the reliance of the Report of M/s Anand Kulkarni & Associates to prove the serviceable nature has not been accepted on valid logical grounds. The grounds taken in the present appeal have to be considered at the final hearing. It is felt that no valid grounds have been brought out to invoke the inherent jurisdiction of the Tribunal to stay the operation of the Commissioner (Appeals)' order.

4. The stay application is therefore dismissed. The matter to come up for hearing in due course.

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