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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-04-1987

Reported in : (1989)(41)ELT550TriDel

Appellant : Deepak Fertilisers and

Respondent : Collr. of Cus.

Judgement :

1. The dispute in all these 76 appeals relates to addition of landing charges to the value of goods imported at Bombay.
2. The Collector of Customs (Appeals), Bombay passed an order No.S/49-272/83-R + as per Annexure; it bears the date of 8-2-1984, and the date of issue of 29-2-1984; below the dates, it has a number BCH No.1172/82. In this order the Collector (Appeals) disposed of 91 appeals from orders of the Assistant Collector; the 76 appeals we have before us now are from those 91 appeals.
3. The learned Counsel for these appellants, Mr. Ganesh, said that his contention for the purpose of these appeals before this bench is only that the addition of landing charges should have been not at the notional 0.75%, but at the actual charges charged by the Port Trust for the concerned consignments. However, he told the Tri. that he contends that landing charges are not at all liable to be added to the assessable value since they cannot legitimately form part of such value; but he would not argue on this issue before us only that the actual charge alone should be added, if any is to be added at all.

4. The two learned Counsellors presented us their points of view for and on behalf of their side in the dispute. The learned Mr. S. Ganesh said that the Appellate Collector had failed to give any finding on their plea that only the actual charges should be added. He referred to a large number of bills issued by the Port Trust showing charges for wharfage and demurrage. It would be seen that the actual charges come to much less than the flat 0.75% added by the Customs House and as a result of this the importers are made to pay enormous sums as duty on account of the notional landing charges. This is unjust and illegal and there is nothing in law to support it. He said that he would be happy if the matter were remanded to the Assistant Collector with direction to reopen the matter on the case of actual charges only to be added, instead of the flat notional 0.75%. He would only pray for the Tribunal to declare the principle that landing charges only equal to the actual charges may be added, and no other. They would be able to produce all necessary documents for each consignment to satisfy the assessing officer, once the basis and the principle of the addition is settled.

5. The Counsel for the department, Mr. Doiphode, told the court that he is not able to understand why this plea is raised at this belated hour when addition of landing charges had been a practice for decades. It is not warranted to upset a long-standing practice simply because the party who imports the goods suddenly decides that the charge is incorrect. There is nothing illegal about the charge and, in fact, non-addition of the landing charges would make assessment incorrect, since an important component in the value of the goods when they enter Indian territorial markets would find no place in it. The goods are sold by the importers by adding landing charges, if not other charges, and he was quite sure that they add not 0.75%, but much more, thereby making illegal profits.

6. The learned Mr. Doiphode also said that the importers did not raise the question of actual charges before the Assistant Collector. They raised it only before the Appellate Collector. It was not possible for the Assistant Collector, therefore, to study the dispute to arrive at a finding.

7. Two judgments were quoted before us, viz., 1982 ELT 203 and the Bombay High Court judgment in appeal No. 60 of 1970 re: Sylvania & Laxman Ltd. The

Bombay High Court judgment in *Sylvania & Laxman Ltd.* is not relevant to the dispute we have here, because that judgment was on the rate of duty, not on the assessable value. There is no dispute before us about the rate of duty to be applied.

8. The Gujarat High Court judgment in 1982 ELT 203 directly relates to landing charges, but for reasons that will become clear in a moment, even this judgment will not provide what the contestants are looking for. The hon'ble court said that it was of the view that the Customs authorities were justified in including landing charges in the assessable value of the goods imported into India for the purpose of computation of the customs duty.

9. The dispute before us, however, took a somewhat different turn when the learned Counsel, Mr. Ganesh, said that his plea before the Tribunal was not for the exclusion of the landing charges, but for the inclusion only of the actual charges. In coming to its decision the Gujarat High Court took the landing charges 3/4% the same as in the present dispute as correct; we have recorded this issue of non-inclusion is not the importers' quest.

10. There is force in the contention of the department's learned Counsel that the plea to add only actual charges was never raised before the Assistant Collector and he was never able to test the correctness of it himself in order to arrive at a judgment. The Collector (Appeals) apparently came to the same conclusion, because he also did not touch upon this problem, though it appears to have been raised before him.

11. However, we will see how the present dispute before us develops and what its logical conclusions are.

12. The appeals filed to us against the order of the Collector (Appeals) have some very revealing passages in paragraph 4. This paragraph becomes very significant against the submission by Mr. Ganesh that the bills issued by the Port Trust for actual wharfage and demurrage should form the basis for charges. The following sentences in this paragraph reflect the factual position as presented by the appellants themselves: "The appellants have paid wharfage to the Bombay Port

Trust for the use of its facilities and for its services in respect of stacking and storing of the imported goods after the same have been landed.

The Bombay Port Trust have not rendered any services in respect of landing or stevedoring of the goods. The wharfage charges are distinct from any landing and stevedoring charges which are incurred for removing the goods from the vessel and placing them on the wharf. In the present case, the Customs Authorities have given a specific finding that the Appellants have paid wharfage charges to the Bombay Port Trust. The Customs Authorities have, however, erroneously proceeded to treat these charges as landing charges.

It is quite clear, therefore, that the actual charges which the importers claim should be added instead of the 0.75% are not landing charges. A reference to the bills also will disclose that these charges are wharfage and demurrage and other charges, but not landing charges.

Wharfage and demurrage are not landing charges as correctly pointed out by the appellants in their appeal: wharfage is the charge or dues exacted for the use of a wharf; while demurrage is payment levied by the port authorities for delay by the importer in removing goods from the port within a fixed time. We are not told what the "other charges" are; but they don't figure in the calculations relevant to landing charges.

13. The appeal tells us in no uncertain terms that the Bombay Port Trust did not render any services in respect of landing and stevedoring the goods; that wharfage is distinct from landing and stevedoring charges; and that the customs made an error in treating these charges as landing charges. If they did so after all this clarification, they would be doubly peccant.

14. This is enough to demonstrate that the importers have not made out a case for adding actual charges instead of the notional flat rate of 0.75% as landing charges, since they have not even shown, there are actual charges different from the notional flat 0.75%.

15. The plea for the Tribunal to declare the principle in favour of actual charges falls. This court cannot declare a principle when the very grounds for such a declaration are absent.

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