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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-29-2004

Reported in : (2004)(96)ECC281

Judge : N T C.N.B., P Chacko

Appellant : Photodeal

Respondent : Commissioner of Customs

Judgement :
1. Appellants one and two, imported four consignments of cameras during 1996-97 at Chennai from Hong Kong. The goods were cleared after payment of customs duty. Subsequently, on 14th October 99, the Additional Director General, DRI, Chennai issued a Show-cause Notice alleging that the values of the cameras had been under-invoiced and misdeclared in customs documents and there was customs duty evasion. Details of alleged undervaluation and duty evasion are available in the Table reproduced below : 2. The abovementioned notice culminated in the passing of Order-in-Original No. 280/03, dated 11-3-2003 of the Commissioner of Customs, Chennai. The Commissioner upheld the charges and demanded the short-levied duty of about Rs. 29 lakhs under Section 28 of the Customs Act, Commissioner also confiscated the goods, with a fine of Rs. 13 lakhs. Penalties were also imposed on the various appellants. The present appeals are directed against those orders. The Commissioner's finding of under-valuation is mainly based on report from the Hong Kong Customs authorities to the effect that value of the goods under the four consignments were higher than the

amounts stated in the invoices issued by the exporter, exporter had declared to Hong Kong Customs in export declaration much higher values than the values mentioned in the invoices (which were produced to the Indian Customs authorities for clearance of the goods). The Commissioner also relied on some documents seized from the importers' premises during a search on 30-9-1997.

Commissioner further relied on the statement rendered by Shri Sanjeev Arora on 15-7-1998 and 22-3-1999 wherein he admitted that high customs duty had made imports uneconomical and that is the reason for the under-invoicing of the goods. He also noted that the appellant's had remitted Rs. 12.5 lakhs as differential duty pursuant to the statement of Shri Arora.

3. The appellants had denied the allegations during adjudication proceedings. They had submitted that the materials relied upon by the Customs authorities, which were in the nature of export declarations or summary of declarations did not constitute legal evidence. They had also pointed out that these documents were not authenticated by the Hong Kong Customs authorities and therefore, their authenticity was in doubt. Appellant also relied on several decisions in support of their contention that unauthenticated and unsubstantiated materials like export declarations, could not form the basis for a finding of mis-declaration of value [CC, Mumbai v. East Punjab Traders - 1997 (89) E.L.T. 11 (S.C.); Sigma Electronics v. C.C., Jaipur - 1997 (9.1) E.L.T.401 (T); Rajendra Sanghvi and others v. CC, Mumbai - 2001 (130) E.L.T.638 (T) = 2000 (40) RLT 619 (T)]. It was also contended that a higher value declaration in the export declarations did not necessarily mean that was the real value of the goods, since that higher value declaration could be to derive some advantage in that country.

4. The appellants have raised the same objections in the present proceedings also. We have perused the records of the case and have given very careful consideration to the submissions made by both sides.

The basic issue is whether the prices declared in the import invoices were the correct prices of the cameras and those prices were required to be accepted for Customs purposes as transaction value or whether the prices reported by the Hong Kong Customs authorities based on their investigation were required to be accepted for customs assessment. The appellants rely on a stout assertion that the invoice prices constituted transaction values, and picking holes in the materials collected during investigation to get out of the proceedings. They have also sought to cast doubt on the motives of the exporter in declaring higher values in export declarations. With regard to the documents seized from them, their explanation is that those documents were prepared for the use by the foreign supplier in order to facilitate the correspondence in English. Their defence in regard to the statement is that it had been retracted. Much case law has also been cited in support of the contention that unauthenticated invoices, export declarations etc. cannot be the basis for dislodging invoice prices/transaction values.

5. Now we proceed to examine the evidence keeping in mind the appellant's objection. We note that evidence on record covers transaction at both ends - appellant importer in India and supplier at Hong Kong. We may begin with correspondence recovered from the appellants' premises. Among the seized documents is a fax dated 29-9-1997 which states as under:"TO: MONICA DATE 29-9-1997 FROM: PRADEEP ARORA I am sending you 5 pages. KINDLY TYPE THE SAME EXACTLY SAME NEATLY ON "YOUR LETTER HEAD & FAX IT TO ME AS SOON AS POSSIBLE:" Another Fax dated 6th March 1997 to Jannifer Yang from Pradeep Arora states as under;"TO: JANNIFER YANG DATE: 6th March 97 FROM: PRADEEP ARORA With reference to our Meeting in PHQTOKINA, 1997 we are interested to IMPORT SKINA SK-107 CAMERA WITHOUT BRAND NAME & OE BOX. Kindly quote your best price & other terms & conditions." Another letter dated 25-9-1997 states as under:TO : LORISU DATE : 25-9-1997FROM : PRADEEP ARORA 1. PAYMENT:- Shall be settled by early Oct'97, Meanwhile we request you to send INVOICE, PACKING LIST, CERTIFICATE OF ORIGIN & ONE ORIGINAL BILL OF LADING TO OUR BANK FOR PAYMENT. "THE VYSYA BANK LTD, 1893, CHANDNI CHOWK, DELHI - 110 006 (INDIA)' for C.A.D. PAYMENT. 2. CORRESPONDENCE :- INDIAN CUSTOMS through somebody might try to get copy of our Correspondence with you. So I advice you to kindly destroy all our Correspondence, & keep a very strong check that nobody takes our file.

3. For us. to be able to clear this pending consignment from Customs we need the following faxes. So kindly type it on your letter heads exactly as enclosed with date & fax it to us as soon. ENCL : 2 PAGES FOR YOU TO FAX EXACTLY AFTER TYPING ON YOUR LETTERHEAD.6. We are unable to understand how such communications could be explained as for the innocent purpose of facilitating business communications in English between non-English people. The real purpose of this correspondence is evident when it is seen in the context of appellant's import. The appellant imported a consignment of cameras under invoice dated 12th May 1997 describing the item as "NO BRAND 35 MM CAMERA". The preceding fax dated 6th March wherein the supplier was asked to supply "SKINA SK-107 CAMERA WITHOUT BRAND NAME & OE BOX" makes it abundantly clear that the invoicing of (he camera as "No brand" was to conceal the real identity of the camera. Importing without 'OE BOX" (Original equipment packing) was also to conceal the identity of the goods. Similarly, the instruction of 25-9-1997 to the forgin supplier to destroy the correspondence flowed from the fear of the fraud being detected. It was an instruction to destroy evidence.

Para 2 of Fax dated 25-9-1997 mentions this in terms. Any amount of explaining cannot wash such tell-tale documentary evidence. The documentary evidence, thus, corroborates the original statement of Shri Sanjeev Arora to the effect that goods had been undervalued. Its subsequent retraction is of no consequence.

7. While what is stated above is the state nature of evidence available in India at the importer's end, the reports received from the Hong Kong Customs confirm that there was a detailed conspiracy for under-invoicing of the goods. In the light of the various objections raised by the appellants about the reliability of export declarations/summary of export declarations, we have carefully perused the correspondence between the Indian Customs authorities and the Hong Kong Customs. It is after detailed investigation that the Hong Kong Customs authorities ascertained the actual value of the goods and reported those prices to Indian Customs along with either export declarations themselves or summary of the export declarations. They have further ascertained and reported that full value for the goods had been paid to the Hong Kong exporter by the Taiwanese supplier. There was protracted exchange of correspondence between the Customs

authorities of two countries to clarify various aspects and to confirm that the values reported related to the very goods under import. Hong Kong customs have also reported that there are no export incentives at Hong Kong, which can prompt exporters to declare higher export values.

8. In the above state of evidence, we find no reason to entertain any doubt that values declared in the import invoices were false and were deliberately so declared so as to undervalue the cameras to evade customs duty. Care was also taken to conceal the correct identity of the goods by suppressing the brand of the goods, by describing the cameras as "no brand" in the invoice and remaining original packings so as to ensure that undervaluation is not detected. Customs Authorities were fully justified in rejecting the invoice values, in the face of conclusive evidence. Assessing the goods based on the values reported by the Hong Kong Customs was also fully justified since it was also confirmed that payment had been received by the Hong Kong supplier at those prices. Credibility of export declarations is also enhanced by the fact that, as confirmed by the Hong Kong customs, there are no export incentives at Hong Kong to act as an incentive to over invoice exports. The penalties imposed are also fully justified by the evidence on record. The case law relied upon by the appellants have no application to a case like the present where the undervaluation is established by documentary evidence and confirmed by oral testimony.

9. There is, however, merit in the appellant's submission with regard to the imposition of redemption fine. In the present case, goods had been assessed and cleared by the Customs authorities. There was also no bond taken since the clearances were not provisional. To such a case, provisions relating to confiscation and imposing of redemption fine cannot apply. That is the view taken by this Tribunal in our decision in the case of Ramkhazana Electronic and Ors. v. C.C. AIR Cargo, Jaipur [2003 (156) E.L.T. 122 (T) = 2003 (57) RLT 254 CEGAT-Del.].

Accordingly, the redemption fine imposed is required to be set aside.

We do so.

10. In view of what has been stated above, the appeals are partly allowed in regard to redemption fine. Subject to that modification, impugned order is confirmed. All the appeals are disposed of in these terms.