Commissioner of Customs Vs. Shree Ram Steel Rolling

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-29-2004

Judge : P Chacko, M T K.D.

Appellant : Commissioner of Customs

Respondent : Shree Ram Steel Rolling

Judgement :

1. In this application the appellant Revenue seeks stay of operation of the impugned order of the Commissioner (Appeals). We have heard the Ld.

SDR for the applicant. None has represented the respondents. However, their written submissions in opposition to the application have come on record. We have considered these submissions as well as the submissions of the Ld. DR.2. The issue involved in the case relates to valuation of a ship which was cleared by the respondents under a Bill of Entry dated 21.11.2001 wherein the price of the ship was declared as US $ 638,369/-, which was based on an agreement dated 20.11.2001 entered into between them and the ship's owner (M/s. Seafast Shipping Ltd). Another party viz. M/s.

TDD Ship Breakers, Bhavnagar, had earlier imported the vessel in terms of an agreement dated 12.11.2001 entered into with the owner of the vessel, wherein the agreed price of the vessel was to US $ 711,125/-.

That party, however, backed out of the deal and stated that they had no objection for the vessel to be sold to anybody else. It was at that juncture that the appellant stepped in for clearing the vessel at a price of US $ 638,369.

3. The Assessing Officer of Customs did not accept the reduced price of the vessel declared by the appellants in their Bill of Entry. He assessed the vessel provisionally to Customs duty on the basis of the original price of US $ 711,125 and the appellants paid the duty accordingly. This assessment was confirmed by the Dy. Commissioner of Customs in his final assessment order dated 25.10.2002, against which the appellants filed an appeal with the Commissioner (Appeals). The appellate authority allowed the appeal. Hence the appeal of the Revenue before the Tribunal.

4. The Ld. DR submits that the lower appellate authority has overlooked the provisions of Section 14 of the Customs Act inasmuch as the authority has accepted a price for the vessel, which was not available at the time of importation. The lower price agreed between the appellants and the owner of the vessel was not available at the time of the importation of the vessel. The price available at that time was only the price agreed between the owner of the vessel and M/s. TDD Ship Breakers, Bhavnagar and, therefore, only that price could be the assessable value under Section 14 of the Customs Act. In this connection, Ld. DR has referred to certain decisions of the Tribunal, also. In the written submissions of the respondents, they have referred to Rule 4 of the Customs Valuation Rules, 1988 and have endeavoured to justify the impugned order of the Commissioner (Appeals). The respondents, however, have not cited any case law in support of their contention. On examination of the grounds of the appeal of the Revenue and the written submissions of the respondents, we note that an issue of fundamental nature has been thrown up in this case, which is whether, in respect of imported goods, a price agreed between the foreign supplier and the Indian importer at a point of time posterior to the importation could be accepted as assessable value for purposes of Section 14 of the Customs Act. No judicial authority has been cited before us to justify the view taken by the lower appellate authority on the above issue. On the other hand, the appellant seems to rely on certain decisions of the Tribunal to assail the decision of the lower authority. Therefore, we are of the view

that the Revenue has made out a strong prima facie case.