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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-09-2004

Reported in : (2004)(94)ECC289

Judge : K Usha, N T C.N.B.

Appellant : Peekay Electronics and Mr. Pramod

Respondent : Commissioner of Customs

Judgement :

1. These appeals are directed against Order-in-Appeal Nos. 402 & 403/ACU/D-1/2003/2361 dated 11.11.2003 of Commissioner of Customs (Appeals), Delhi. Under the impugned order the Commissioner has up-held the Order-in-Original passed against the appellants. The dispute related to Floppy Diskettes imported by the appellants in June 1995.

They were confiscated on the ground that the description and value had been misdeclared and customs duty evaded by such misdeclaration. The declared value was enhanced by 73% on the basis of import of identical goods at Mumbai.

2. The submission of the appellants is that the goods had been cleared through the customs after proper assessment. It is also pointed out that before the assessment of the goods customs authorities had increased the value of the goods by 0.18 per piece in terms of some special investigation branch (customs) enquiry. It is the appellants submission that in a case where goods had been duly

assessed after enhancement of value, it is not open to the authority, later no, to allege that the value or description had been misdeclared, because without considering these aspects no addition could have been made to the transaction value. It is further pointed out that the charge of misdeclaration of particulars is that the appellant described the goods as "5.25" Floppy Diskettes DS/HD' while the goods were actually "5.25" Floppy Diskettes, Formatted; IBM; Verbatim, Datalife Plus MD 2HD, Teflon Protected'. The appellants explanation is that in-fact both the description being the same, inasmuch as DS stood for double sided and 2HD stood for high density, actually there was no misdeclaration of description.

3. During the hearing of the case, learned Counsel for the appellants also pointed out that the entire proceedings were illegal inasmuch as, the order has been passed based on some purported imports at Bombay, without disclosing the details of those imports and giving the copies of those import documents to the appellants. He further stressed that because of the unwarranted and unjustified actions of the Customs authorities, goods have been pending with them for several years.

Presently, the goods are hardly usable with the current models of computers.

4. We have perused the records and considered the submissions made by both sides. The actions of the lower authorities are clearly unjustified. The goods had been originally assessed after enhancing their value based on special investigation branch orders. It is incomprehensible that the enhancement of value was made without considering the properties of the goods the appellants have also acceptable explanation about the abbreviations used in their import documents about the nature of the goods. Moreover, apart from making an assertion that identical goods were cleared at Bombay Port at higher prices, no particulars have been brought on record as to the time and nature of the goods declared or the documents under which those goods were cleared. Those particulars were also not disclosed to the appellants. In these circumstances, impugned order is not sustainable.

It is set aside and the appeals are allowed with consequential relief to the appellants.

