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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-28-2004

Judge : S T S.S., T Anjaneyulu

Appellant : Marvel Copier Systems

Respondent : Commissioner of Customs

Judgement :
1. The appellants imported a consignment of old and used photocopying machines at Kandla port. On examination carried out by the officers of Customs at Kandla, it was found: i) the importer had imported second hand old and used photocopying machines which were restricted item under para 2.17 of Chapter 2 of Import Export Policy 2004-2007 and the importer had only to produce a licence which was required for import of such goods.

ii) The importer also did not declare model NP 6062, NP-6060 & NP6050 of Canon and Olivetti copia 8050 photocopier which were found during the examination of the cargo.

iii) The importers had declared the assessable value for the consignment to be Rs. 7,12,518/- whereas the actual assessable value and market value as discussed in the Show Cause Notice would work out to Rs. 25,89,267/- and Rs. 50,56,764/- respectively.

a) Violation of Customs law and liability for confiscation under Sections 111 (d), 111 (1) and 111 (m) of the Customs Act, 1962 and gave an option to redeem the goods on payment of fine of Rs. 10.00 lakhs on the importers in lieu of confiscation and a penalty of Rs. 4.00 lakhs was imposed under Section 112 of the Customs Act, 1962 and the assessable value of the consignment of 42 pieces of old and used photo copier machines as imported was fixed at Rs. 7,12,581/-and duty was ordered to be recovered accordingly.

4. After hearing both sides, and considering the material on record, it is found: a) there is a clear cut finding that goods are not as per the invoice produced exists, inasmuch as the quantity of models as mentioned in the invoice and the contents of the consignments do not corroborate. Certain models have been found, which are not mentioned in the said invoice The Ld D.R. also pointed out that the country of origin is also misdeclared. In this view, the valuation cannot be done on the Transaction Value shown on the invoice produced. The Commissioner has by applying the formula under Rules 5 and 6, read with Rule 8 has come to determine the valuation, after relying upon the data as available in the Custom House. Therefore, in the facts of this case, we cannot find any reason to upset the valuation as arrived at by the Commissioner.

b) As regards the market value, it is found that the Commissioner has gone by certain calculations of market value and has given certain cost and margin of profit but sources for coming to this costing and margin of profit are unexplained. New goods have been compared to old/used models. The Ld Consultant could not substantiate his version of the market value. In fact, his claim was that the goods did not fetch any profit for him at the levels of redemption fine and penalties imposed and the demurrage and other dues which are required to be paid therefore the goods were not cleared. This plea will not enable the appellants to claim the clearance of the goods without a redemption fine. The ld D.R. has also relied upon the decisions in the case of Unitop Office Automation v. Commissioner of Customs, Delhi 2001 (135) ELT 1268 (Tri-Del), and Photo Copy Centre v. Collector of Customs 1991 (56) ELT 801 (Tri), wherein the goods were found to be photocopier machines and the declared price were not considered to be transaction value. We find that the reliance of the Ld Consultant on the case of

Etcher Tractors Ltd v. Commissioner of Customs, Mumbai 2000 (122) ELT 321 (SC) and Tolin rubbers Pvt Ltd v. Commissioner of Customs, Cochin 2004 (163) ELT 289 (SC) will not help the appellants' case to upset the valuation as arrived since we have arrived at a finding that transaction value cannot be accepted when the goods are not found to be as per the invoice claimed to be for that transaction and upholding the application of Rule 8 in this case. However, relying upon the case law cited by the Ld D.R., we would consider reduction in redemption fine and penalty in this case of import of photocopier machines is required to be reduced while approving the liability to confiscation under Section 111 (d), (1) and (m) and penalty under Section 112 (a). Therefore, the redemption fine is reduced to Rs. 5.00 lakhs and penalty to Rs. 1.00 lakh.

5. Appeal partially allowed with respect to redemption fine and penalty as above.