

J.N. Enterprises Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-05-2004

Reported in : (2004)(97)ECC450

Judge : S Kang, N T C.N.B.

Appellant : J.N. Enterprises

Respondent : Cc

Judgement :

2. Appellants filed this appeal against the Adjudication order passed by the Commissioner of Customs whereby the value of old and used goods used enhanced. The goods were imported without licence and, therefore, were ordered to be confiscated and the Commissioner of Customs imposed redemption fine of Rs. 10,00,000 and personal penalty of Rs. 2,50,000.

3. The appellants are challenging the enhancement of the value of the goods in question. In respect of the licence, the appellants submitted that these are second-hand goods and, therefore, they are not challenging the Adjudication order in this regard.

4. The contention of the appellants in respect of the value is that the goods in question are old and used main frames and the customs authorities considered these goods as complete photocopiers and enhanced the value. The customs authority got the goods inspected by one Chartered Engineer and Chartered

Engineer in his report dated 19.1.2004 specifically mentioned that the vital components like control panels, power supply, units, various PCBs, DP units, toner tanks, plastic covers etc. are not with these old and used frames. The appellants also relied upon the decision of the Tribunal in the case of National Imaging Systems v. CC, Faridabad, Final Order No.156-157/2004-NBA dated 25.2.2004 wherein, in similar situation, the Tribunal accepted the value as declared by the importer.

5. The contention of the Revenue is that as the goods are complete photocopiers. The appellants buy old and used photocopiers, strip them off of certain unimportant parts and import them by declaring as main frame of the photocopier machine.

6. We find that in this case, the appellants made import of old and used frames of photocopiers. There is no evidence on record produced by the Revenue to show that these are complete photocopier machines. The Tribunal in the case of M/s. National Imaging Systems wherein value was enhanced in respect of old and used frames on the same ground, set aside the enhanced value. The Tribunal held as under: "We find merit in the submissions made by the appellants. The expert's Certificate itself would show that the price declared in the import invoices were not so low as to be considered non-commercial. There is also no allegation or material to support an allegation that there is any special relationship between the Exporter and Importer or any under-hand transaction was taking place, The learned Counsel for the appellants is right in this submission that it is well settled that transaction value can be rejected only for the reasons mentioned in Valuation Rule 4(2) of the Customs Act, 1962 (Eicher Tractors Ltd. v. Commissioner of Customs, Mumbai,(SC) and Tolin Rubber Pvt. Ltd. v. Commissioner of Customs, 2004 (163) ELT 289. In these facts and circumstances, enhancement of values under the impugned orders cannot be sustained. However, as already noted confiscation under Section 111(d) and penalty are sustainable.

All the same, reduction in the amounts of redemption fine and penalty are warranted in view of the fact that adjudication orders fixed those amounts treating the value of the consignments as the values revised and enhanced." 7. In view of

the above decision of the Tribunal, we accept the contention of the appellants and set aside the impugned order in respect of the enhancement of value in respect of imported goods.

However, as the second-hand goods are restricted goods, therefore, they are liable for confiscation. The redemption fine in lieu of confiscation is reduced to Rs. 1,00,000 and the penalty is reduced to Rs. 50,000.

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