Commissioner of Customs Vs. Armstrong World Inds. (i) Pvt.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-09-2004

Judge : J Balasundaram, A M Moheb

Appellant : Commissioner of Customs

Respondent : Armstrong World Inds. (i) Pvt.

Judgement :

1. This is a Revenue's appeal against the order of Commissioner of Customs (Appeals), who in the impugned order set aside the order of the lower authority. The issue relates to valuation of goods imported by the respondent from M/s. Arm strong World Industries incorporated in USA. It is an admitted fact that the respondent is a subsidiary of the parent company who supplied the goods.

2. The short issue that arose is whether the import is between related parties. The lower original authority observed that the importers were getting a discount of 25% to 30% from their supplier as they are related persons of the supplier. He ruled that the discount of 25% to 30% as declared by the importer is not admissible. He determined the value disallowing the discount of 25% to 30% on the declared price. In appeal the Commissioner (Appeals) set aside the order of the lower authority. The department is aggrieved by the order of the Commissioner (Appeals) and hence this appeal.

4. The main grouse of the Revenue is that the Commissioner has taken into consideration several documents such as invoices etc. which were not originally

produced by the respondents before the Deputy Commissioner. The Respondents have filed an 'analysis of imports' of Mineral Fibre Sheets from 1st July 2003 to August 2003 before the Commissioner (Appeals) indicating the bill of entry number and the price at which the same goods were cleared etc. by other importers and claimed that their prices are well above, the prices at which other importers cleared the same goods. It was their contention before the Commissioner (Appeals) that their relationship with the supplier has not influenced the price of goods under import. The Commissioner should not have dealt with the evidence produced before him for the first time. The proper course would have been to direct the appellants before him to file evidence before the original authority by remanding the matter. It is necessary that the original adjudicating authority sees the bills of entry under which similar/same goods are claimed to have been cleared to find out whether the goods involved in those bills of entry are same as those under dispute. The Commissioner ought not to have decided the appeal on the basis of invoices filed by the respondents, which were originally not submitted before the adjudicating authority. We therefore remand the matter to the original authority with a direction that the respondents should file the relevant bills of entry under which similar goods were seemed to have been cleared. The original authority (Dy. Commissioner) should also verify the contention of the respondents by calling for the copies- of the Bills of Entry under which similar goods were claimed to have been cleared at lower prices.

5. The appeal is allowed by way of remand to the original adjudicating authority (Dy. Commissioner) with a direction that the respondents file all relevant evidence before him for a fresh consideration of the issue.