

Multitrade Overseas Vs. Commissioner of Customs and C. Ex.

Multitrade Overseas Vs. Commissioner of Customs and C. Ex.

SooperKanoon Citation : sooperkanoon.com/36051

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-26-2004

Reported in : (2004)(172)ELT397TriDel

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

Appellant : Multitrade Overseas

Respondent : Commissioner of Customs and C. Ex.

Judgement :

1. The appellant imported a consignment of 100% Silk fabric and declared a value of about Rs. 30 lakhs. This, according to the appellant, was the transaction value. Under the impugned order, the Commissioner of Customs enhanced the value of the consignment to Rs. 49 lakhs for the purpose of levying Customs Duty. The reason for such enhancement was that there was import of the same goods at the higher price. The appellant explained that its lower purchase price was because the consignment in question was a stock lot and that accounted for the lower price. This explanation of the appellant did not find favour with the Commissioner. The Commissioner confiscated the consignment under Section 111(m) of the Customs Act on the charge of mis-declaration of value. A redemption fine of Rs. 25 lakhs and a penalty of Rs. 3.5 lakhs were also imposed. The present appeal challenges that order.

2. The defence of the appellant before us is the same as the one taken before the Commissioner. During the arguments, Id. Counsel for the appellant has

emphasised that the finding regarding mis-declaration of value is devoid of any basis. He also pointed out that the finding is contrary to common commercial practice of disposing of stock lots at discounted lower prices. In this regard, Id. Counsel drew our attention to the judgment of the Apex Court in the case of Eicher Tractors Ltd. v. CC, Mumbai reported in 2000 (122) E.L.T. 321 (S.C.), wherein the Hon'ble Supreme Court observed that - "A discount is a commercially acceptable measure which may be resorted to by a vendor for a variety of reasons including stock clearance".

3. We have perused the records and heard Id. DR also. We find no material on record to justify an allegation that the price of the imported consignment had been misdeclared. A declaration is a mis-declaration only when the declaration is contrary to true facts. In the present case, it would appear that the appellant was declaring his purchase price to the Customs. There was no deliberate declaration of a lower price than the price covering the transaction. The packing list makes it clear that the consignment is constituted of assorted rolls of varying lengths (about 46 to 13 mts.). The appellant's explanation for the lower price is that such stock lots command a lower price than fresh materials in standard lengths. This explanation has received judicial recognition in the judgment of the Apex Court in the case of Eicher Tractors Ltd. The finding reached by the Commissioner that there was mis-declaration of value, is not supported by any evidence, or even, commercial practice.

4. In the view we have taken above, the impugned order is not sustainable. It is set aside and the appeal is allowed with consequential relief to the appellant.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com