Ram Mohan and Sons and ors. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-27-2004

Reported in : (2005)(100)ECC135

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

Appellant : Ram Mohan and Sons and ors.

Respondent : Cc

Judgement :

1. The issue raised in all these appeals is common. Accordingly they were taken up for hearing together and are disposed of under this common order.

2. The appellants declared the goods in imported consignments as "completely pre-mutilated and fumigated old woollen rags "pre-mutilated and fumigated old woollen rags" "completely pre-mutilated synthetic rags" pre-mutilated rags etc. When the consignments were examined, it was observed that they consisted of old and used garments of various types/sizes/nature. The items were jackets/wind cheaters, coats, trousers, tops, shirts, baby garments etc. There was also variation found with regard to weight. Proceedings were, therefore initiated proposing confiscation of the goods for misdeclaration of description and value. These proceedings ended in the passing of the impugned order. The Adjudicating authorities confiscated the goods and allowed their redemption on payment of fine and penalty. Values were also enhanced for the purposes of assessing to Customs duty. The present appeals challenge those orders.

3. The contention of the appellants is that they had ordered pre-mutilated woollen/synthetic rags and their foreign suppliers sent the consignments in question. It is being contended that there was no misdeclaration of the goods inasmuch as, in the supplier countries, all used garments are treated as rags. It is also being contended that the Customs authorities were not justified in enhancing the values for the purposes of assessment since the declared values were the transaction prices and declaration of a transaction price as the value of the imported goods cannot be treated as misdeclaration. It is also being pointed out that basis for enhancement of value has not been disclosed.

4. As against the above contentions, the submission of the learned SDR is that the imported goods did not match the declaration filed in the Bills of Entries and invoices with regard to description of goods. He has pointed out that the consignments were found to be garments, though used, while the declarations were to the effect that the imported goods were mutilated woollen/synthetic rags. Thus, the declaration was totally false with regard to description. Further, the garments had not been mutilated, contrary to the declarations to that effect. The learned SDR has pointed out that used/second-hand garments are being imported in the guise of pre-mutilated woollen/synthetic rags. Thus, it is a clear case of mis-declaration of goods.

5. The learned SDR has emphasized that the import is in clear violation of the Import Policy, inasmuch as second-hand used garments are not permitted to the imported, Provision is to import woollen/synthetic rags in a pre-mutilated condition so that the Indian Industry could retrieve yarn/fibre from rags and use it in production of fresh yarn.

According to the learned SDR, such a Provision is being deliberately abused by the importers for the import of second-hand garments. He also has pointed out that some of the consignments included even cotton goods as against the declaration of woollen/synthetic goods and it is well known that cotton yarn/fibre cannot be retrieved from cotton rags.

6. It is the submission of the learned SDR that once the goods are found to be serviceable garments, as against the declaration of rags, it follows that the

declared values were also false inasmuch as those were the values for rags and not for garments. The learned SDR also has pointed out that, the enhancement made to the declared value cannot be taken exception to inasmuch as the enhancement is quite moderate.

Finally, the learned SDR has submitted that there is no need to interfere with fines and penalties also, as they were also moderate, take into consideration the value of the goods involved and duty sought to be evaded.

7. We have perused the records and considered the submissions made by both sides. A table annexed to this Order brings out the relevant facts about the variations in description, quantity, value and duty. They also mention the redemption fines and penalties imposed in each case.

8. The examination of the consignment has shown that the imported goods have clearly been misdeclared. All the consignments had been declared as "pre-mutilated" rags. But when the consignments were opened and examined, goods were found to be mostly usable garments. Mutilation contemplates damaging by removal of parts. In respect of garments, effective mutilation would involving cutting the garments into such pieces that they cannot even be re-stitched into the original garment without damaging appearance. Each of these consignments have been declared as mutilated; but the examination has shown that no such damage had been done to the garments, as they had been imported in serviceable condition. Therefore, clearly, the declaration regarding mutilation was false. Even if the appellant's explanation that all rejected garments are treated abroad as rags is accepted it is difficult to understand now mutilation can have a different meaning abroad. The learned SDR is right in his contention that the declaration regarding mutilation is entirely false and that the same has been done deliberately in the import documents to facilitate import of serviceable garments. It this view of the matter, we hold that the lower authorities were right in treating the goods as misdeclared. The enhancement of value is also justified since the goods were found to be serviceable garments as against mutilated rags, it is indeed, a strange argument that rags and serviceable garments cost the same. Therefore, the prices declared could not have been accepted for the purpose of valuation since those

prices were evidently not commercial prices.

8. Misdeclaration becomes evident when the case is viewed from another angle also. The consignments were supposed to be woollen/synthetic rags from which yarn and fibre could be retrieved. As against this, the imported consignments were found to be jacket, wind-cheaters, coats, trousers, tops, shirts, baby garments etc. of all fibres, including cotton. The Revenue was, therefore, right in contending that the provision for importing mutilated rags for retrieving yarn and fibre was being deliberately sought to be abused for the import of used/second-hand garments, the import of which is not permitted.

9. We also agree with the learned SDR that no interference is called for with regard to the enhancement of values since rejection of declared value was necessary since the goods under import were different from the declared goods and the enhancement made is very moderate. Same is the position in regard to fines and penalties too.

They are quite moderate compared to the undervaluation and attempted amounts of duty evasion.

10. In view of what is stated above we find no merit in the appeals.

They fail and are rejected.