

Commissioner of Customs Vs. Globe Enterprises

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-08-2004

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of Customs

Respondent : Globe Enterprises

Judgement :

1. A consignment of old & used Diesel Engines was imported at Pune, BE dated 28.8.99 was filed. The goods were ordered to be confiscated under the provision of Section 111(d) 111(m) & redemption fine of Rs. 12,00,000/- imposed after the assessable value was raised & a penalty of Rs. 1,20,000/- was imposed.

i) The Tribunal in case of Shehla Enterprises (1995 (80) ELT 360 had arrived at a value of such engines imported in 1993 to Rs. 15,692 per engine, while the present valuation arrives at is Rs. 6864/- per engine. The assessable value upheld by CEGAT in that order is further supported by quotations obtained in the month of march 2000.

Therefore the Commissioner has grossly issued in relying on a purported market enquiry.

ii) Imposition fine & penalty has not deterred the import of Diesel Engines. They do not pass the test of emission norms laid down by the RTO & vehicles fitted with such engines are not approved for.

Registration in Maharashtra. Euro Emission norms are order of the day. Therefore Commissioner should have absolutely confiscated the goods.

iii) The present case involving huge unauthorised importation of second hand diesel engines of well known brands which are having substantial demand in a centre like Mumbai & which fetch substantially high prices, required a detailed enquiry to be made before merely loading the assessable value or for arriving at the margin of profit.

iv) Commissioner has erred in taking into consideration the report of the Chartered Engineer, which is vague & full of contradictions. *Madhu Corporation v. CC Jaipur*

3. Heard the DR who retracted the grounds taken. The Respondent were absent. Considered the matter and it is found-- a) The imports in the case at Calcutta by M/s Shehla Corporation (1995 (80) ELT 360 in the year 1993 September & the fact of that firm importing the goods was not found to at the address given, & contemporaneous imports at Bombay and Madras Customs were obtained & thereafter transaction value was rejected. The absolute confiscation was ordered, since imports were by a fictitious firm & penalty of only Rs. 1 lakh was imposed on that firm & on one Saghir Ahmed a penalty of Rs. 50,000/-. Imports made by a fictitious firm in 1993, at Calcutta, cannot be the basis for comparing the imports at Pune, six years later by a firm it is found fictitious since imports in the case before us were made at Pune in the year 1999. The proposed value as in calendar import cannot be contemporaneous to apply to Pune imports. Similarly the material and quotations relied upon, in the grounds, to impugne the values are obtained in March 2000 that too for imports at which port is not known. Such quotations cannot be basis to arrive at and accepted to be evidence for contemporaneous value imports at Pune. The Commissioner on the other hand has arrived at a valuation, by applying rule 8, based on 'basis of values of similar goods'.. as seen from para 11 of the impugned order. He thereafter is relying upon the decision in 1999 by Commissioner (Appeals) at Mumbai & the market enquiries ascertainment of Margin of profit in wholesale market & thereafter has arrived at the valuation and redemption fines. In order to maintain uniformity. He imposed a fine of 100% and penalty of 10% as is evident from para 13 of the impugned order. These findings have not been challenged in the appeal before us.

We therefore find no reason to conclude that the Commissioner has not valued the goods correctly or after due enquiries as is being urged before us.

b) Grounds of RTO restriction in registration, is directly in contrast with the other ground taken that in Mumbai there is substantial demand of such engines. How can there be a demand when such cars with these engines will not be registered in Maharashtra is not explained in the grounds. Contrary grounds have been taken, that only indicate that there is no valid reason for upsetting the order impugned.

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