Skd Commercial Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-25-2004

Reported in : (2005)(180)ELT84Tri(Mum.)bai

Judge : A Wadhwa, S T S.S.

Appellant : Skd Commercial

Respondent : Commissioner of Customs

Judgement :
1. The appellants imported 132 units of old and used Photocopier Machines of various brands totally valued at Rs. 17,29,667/- and filed the Bill of Entry dated 24.10.2003 for clearance. After first check examination by the Customs staff it was found that the Model number & description were incomplete and the goods were found to be old and used as declared.

On the basis of certain values in the report obtained from DRI Kolkatta the correct value of old and used copier machine was taken as :---Model Declared C (FOB) Prices Ascertained Oty (No & F Price suggested by Value (20% of pcs)--- Olivette 175/- - 210/- 47147 125/- - 150/- 97141 175/- - 210/- 88030 325/- - 390/- 38040 375/- - 450/- 158130 325/- - 390/- 98521 250/- - 300/- 127047 125/- - 150/- 1Canon 4050 375/- 425/- - 10Canon 3050 375/- 425/- - 2Canon 1520 175/- 210/- - 5Canon 2020 250/- 280/- - 4Canon 3030 325/- 325/- - 1Canon 1215 175/- 200/- -

2Canon 3825 200/- 375/- - 1Canon 6060 600/- 700/- - 4Canon 6062 600/- 700/- - 5Canon 8580 50/- 750/- - 1GP30F 150/- 400/- - 1Agfa 200 E 250/- - 300/- 4Agfa 510X 275/- - 330/- 3Kodak 30 325/- - 390/- 1Selex 3100 375/- - 450/- 4Selex 4100 375/- - 450/- 6Selex 2010 125/- 280/- - 1Richo A 200 250/- - 300/- 1Richo A 250 250/- - 300/- 1Richo A 401 300/- - 360/- 1Xerox 5352 275/- - 330/- 2Xerox 5765 300/- - 575/- 1Trolly 5/- - 10/- 1Fiery 10/- - 20/- 1--- 2. In view of the ascertained value being higher than the value declared, charges of gross undervaluation with the view of evading Custom duty along with infringement in terms of Para 2.17 of Import Export Policy 2002-2007 was alleged since as per this para of second hand goods were restricted for import.

3. The Commissioner of Customs, vide the order impugned, held that the value of the goods be increased from the declared value of Rs. 17.29 lakhs to Rs. 21.05 lakhs on the basis of the investigation report of DRI Kolkatta for similar models were said to be have valued at those prices. The goods were accordingly confiscated, under Section 111(d) and 111(f) and redemption of Rs. 6 lakhs was offered along with penalty of Rs. 1.20 lakhs. Hence this appeal.

a) The plea that the report, relied upon, i.e. Kolkata DRI's report were not shown to the appellant and cannot therefore be relied is well founded. For valuation of comparatable goods, which are second hand old and used, as in this case & admitted, it would be very necessary to determine that the country of origin, model and make, present condition of the goods under imported, were identical. These parameters would be imperative to establish to hold goods to be comparative and or similar in the facts of this import & the imports at Kolkata cannot be establish. Valuation therefore as arrived cannot be "upheld merely on the basis of a report, as in this case, as the goods imported presently were never seen by the Experts and no finding arrived as to the extent of use and deterioration, depreciation that could be granted. We find no reason to upheld enhancement of valuation when actual sale, as emiseged under Rule 7 at the prices proposed is not on record. The liability to confiscation arrived at under Section 111 (m) in the fact of this case cannot be therefore upheld. b) The appellant have produced Bill of Entry No. 166817 dated 7.7.2003, where in the redemption fine imposed was about less than 5% of the value of the goods. The plea that the appellant were under bonafide belief that said import are permissible to be imported under the policy, without a specific licence is to be upheld, since they rely on in this Tribunal order No. 563 - 564/ 2004-NB (A) dated. 8.6.2004 certified on 21.6.2004. In this case of BE OFFICE AUTOMATION PVT LTD & wherein it has been held that Photo copier Machines were not consumer goods and confiscation of second hand photocopier machines imported was set aside. In this view, of the unsettled position we would give the benefit of doubt to the importers in the present case and order that as the confiscation under Section 111(d) be set aside.

5. When confiscation under Section 111(d) & 111(m) are not to be upheld, the penalty imposed under Section 112 is not called for and is to be set aside. 6. In view of our finding the order is set aside and appeal allowed.