

indigo Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-14-2004

Reported in : (2005)(183)ELT105Tri(Mum.)bai

Judge : A Wadhwa, S T S.S.

Appellant : indigo

Respondent : Commissioner of Customs

Judgement :

1. The dispute in the present appeal relates to the valuation of 82 old and used photocopying machines imported by the appellant with a declared value as Rs. 9,01,600/-. In as much as the appellant had not produced the Chartered Engineer's Certificate, the goods were examined at first check basis under DC (Docks) supervision and it was suspected that the value declared by the appellant was on the higher side. It was also found that the photocopying machines were imported without a licence whereas the same required a valid specific licence. Based upon the examination and the computer print outs, proceedings were initiated against the appellant for enhancement of the value, confiscation of the goods and imposition of penalty.

2. Vide his impugned order, Commissioner of Customs, Mumbai has enhanced the value of 82 photocopying machines to Rs. 29,06,826.25. The goods have also been confiscated with an option to the appellant to redeem the same on payment of the redemption fine to 8.10 lakhs. In addition, personal penalty of Rs. 2.60 lakhs

has also been imposed. The said order of the commissioner is impugned before us.

3. We have heard Shri. Z. B. Nagarkar, Consultant appealing for the appellant along with U.N. Answekar, Ld. Advocate and R. Pardeshi, Ld.

JDR appearing for the revenue.

4. The main contention of the appellant is that the photocopying machine being old and used, mere cannot be contemporary import in respect of such goods. The transaction value has been discarded by the revenue by relying on and going by the report of the DC (Docks) which cannot be called as an expert opinion. As regards, the liability to confiscation under the Customs Act C 86L reliance has been placed upon the Tribunal decision in the case of Be-office Automation Pvt. Ltd. and Anr. v. CC, Mumbai reported in 2004-TIOL-682-CFSTAT-DEL. Reliance is also placed by the appellant on the earlier order of the bench in the case of SKD Commercial v. CC, Nhava Sheva order No. A/893/WZB/2004/C-II dated 25/10/2004 similar import having been allowed.

5. Shri. R. Pardeshi, Ld. JDR has adopted the reasoning of the Commissioner and has submitted that failure on the part of the importer to produce the Chartered Accountant Certificate necessitated the examination of the goods by the Dock Authorities and that report after examination, was conducted in presence of the appellant's representative and accepted. The appellant has also, at the time of clearance agreed to pay duty on the enhanced values.

6. It is observed that in the decision relied upon it is held that for valuation of second hand and used item, the present condition of the goods under importation is relevant and held that the two imports to be identical and thus contemporaneous, imports factors such as Country of Origin, Model and Make, present condition of the goods under importation etc are required to be taken into consideration before such comparison could be arrived. In as much as the goods were never seen by the experts and no findings arrived as to the extent of use and deterioration, depreciation of value etc, there is no reason for approval of enhancement of the valuation in their case. As regards the licence requirements,

we find that the Tribunal has already held that the such imports of photocopying machine can be made without a licence, confiscation of the goods herein as arrived, therefore cannot be upheld.⁷ As such we do not find any justification of enhancement of valuation or confiscation of the goods and imposition of penalty upon the appellant. Accordingly, the impugned order is set aside and appeal is allowed by with consequential relief to the appellant.

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