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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-22-2004

Reported in : (2005)(99)ECC213

Judge : S T S.S., T Anjaneyulu

Appellant : Surendra Engineering Corpn.

Respondent : Commissioner of Customs

Judgement :

1. The assessee is in appeal aggrieved by the Order-in-Original passed by the Commissioner of Customs. Jawahar Customs House, Nhava Sheva, wherein he imposed fine of Rs. 25,000 on the assessee after ordering confiscation of the goods under Section 111(d) of the Customs Act, 1962.

2. The appellant M/s. Surendra Engineering Corpn., is a recognized Export House, engaged in Export of various items, including Sugar Mill Machinery and part thereof. The appellant also undertakes repair of worn out sugar mill rollers by re-shelling them. This activity is confined not only within the country, but also for the purpose of export earning valuable foreign exchange. In May 1998, the appellant imported 8 Nos. of Shafts for sugar mill rolls from France for the specific purpose of repairing them by re-shelling and re-export back to France. In order to clear the goods through customs, the requisite Bill of Entry No. 03870 dated 29.5.1998 was filed in the Nhava-Sheva Customs alongwith all supporting documents. Duty free clearance was claimed in terms of Notification No. 153/94 and the benefit of Para

5.7 of Export & Export Policy was sought for the purpose of free import duty. The goods were examined in the shed under the supervision of the Asst.

Commissioner of Customs, who certified that the invoice declared CIF value of Rs. 6,16,067 was fair.

3. The Dealing Group, however, raised objections regarding the value, applicability of Notification 154/94 and the importability in terms of Para 5.7. of the policy book. The appellant explained vide letter dated 20.6.98 that the value of the mere shafts was only slightly higher than the scrap value because the goods will have to be ultrasonically tested before they could be used for the purpose of re-shelling. At the instance of the Group, the appellant also obtained a Chartered Engineer's Certificate locally based upon documentary evidence available.

4. The Group did not accept the appellant's contentions and issued show cause notice dated 13.7.1998, proposing to enhance the value of Rs. 22,71,076, to deny the benefit of Notification No. 153/94, to confiscate the goods under Section 111(d) of the Customs Act, 1962 and to penalize the appellant under Section 112 *ibid*. The appellant gave detailed reply denying the allegations.

5. The Commissioner of Customs, however, by his Order No. 22/99 dated 23.7.1998 ordered enhancement of value to Rs. 22,71,076 (CIF) for the purpose of Bond for re-export, but accepted that the goods are eligible for duty free benefit in terms of Notification No. 153/94. He also ordered confiscation of the goods under Section 111(d) of the Customs Act, 1962 with redemption fine of Rs. 25,000. Since the goods were urgently needed for repair and return, the appellant had no choice but to clear the goods on payment of fine of Rs. 25,000 and the execution of the Bond of the guarantee for the enhanced value. The Order was, however, issued only on 25.3.1999 and aggrieved by the same, the appeal is filed.

6. It is urged before us that the Commissioner of Customs has erred in rejecting the declared value and ordering enhancement of value based upon the instructions from the Ministry of Finance. It ought to be appreciated that the declared value was certified as fair after inspection of the goods by the shed staff, who examined the goods physically. Further, the formula of depreciation given by

the Government of India is applicable only to capital goods like machines and not to parts like rolls.

7. The goods imported for repair and return were covered by the terminology "Other Equipments" specifically appearing in Para 5.7 of the Export/Import Policy Book 1997-2000. The view taken by the Commissioner of Customs that the words "and Other Equipments" qualifies "Construction" is not correct.

8. Having considered the submissions made by the appellant and the Ld.

DR and further having regard to the facts and circumstances involved in this appeal and lastly as the goods were exported back after the repairs, we find no justification in imposing redemption fine of Rs. 25,000. Accordingly, the same is set aside. In the result, appeal is allowed.

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