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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jan-25-2005

Reported in : (2005)(100)ECC50

Judge : A T V.K., P Chacko

Appellant : Cc

Respondent : District Controller of Stores Icf

Advocate for Def. : Shri. K. P. Jagadeesan

Judgement :

1. The issue involved in these two appeals filed by the Revenue relates to applicability of the exchange rate under Section 14 of the Customs Act, 1962. Mrs. R. Bhagyadevi, learned SDR, submitted that the Respondent, the Controller of Stores, Southern Railways filed Bills of Entry for clearance of bail bearings, payment of which is to be made in German Marks. In addition, 5% of the contracted price is to be paid as commission to the agent in India which is includible in the assessable value of the imported ball bearings. The contention of the department is that the exchange rate prescribed by the Central Govt. under Section 14 of the Customs Act, 1962 will have to be applied for converting the total value of the imported goods inclusive of the local agency commission. Commissioner (Appeals), however, under the impugned orders, has held that the amount to be paid to the Indian agent arrived at by converting the amount involved at a fixed rate of exchange, actually paid/payable in Indian currency at the pre-

determined rate of exchange would only be relevant for the purpose of levying the Customs duty.

Commissioner (Appeals) has further held that the rationale is that rate of exchange machanism as provided in Section 14(1) of the Customs Act, 1962 will come into play only where payment for the imported goods is to be made in the currency other than Indian Rupees. Learned SDR further submitted that the provisions of Section 14(1) of the Customs Act, 1962 are very specific. Proviso to Sub-section (1) mentions that the price shall be calculated with reference to the rate of exchange as in force on the date on which the Bill of entry is presented under Section 14 of the Customs Act, 1962. She has also relied upon the decision of the Hon'ble Madras High Court in the case of Trio Marketing Pvt. Ltd. v. UOI, 2000 (122) ELT 32 (Mad.) wherein the High Court did not accept the contention of the petitioner that the official rate for foreign exchange should be adopted as the Letter of Credit (LC) was opened by the Bank at the official rate and Bank paid only the official rate for the imported goods.

2. Countering the arguments, Shri K. P. Jagadeesan, learned Counsel for the respondents submitted that Rule 9(1) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 provides for addition of commission and brokerage to the extent incurred by the buyer and are not included in the price actually paid or payable for the imported goods. His contention is that Rule 9(1) clearly provides that such charges are to be added to the extent they are incurred and not more than what have been incurred. In the present matter commission paid to the Indian agent is after converting the Deutch Mark (DM) into Indian Currency at the fixed rate and as the particular amount has been paid as local agent commission under Rule 9(1), only the said amount as paid has to be included in the assessable value for the purpose of levying duty. He also contends that Customs Valuation Rules, have been enacted separately in parity with the provisions of GATT. He relied Upon the decision of the Hon'ble Delhi High Court in the case of Essar Steels v. UOI, 2001 (128) ELT 353 (Del). The learned Counsel finally submitted that once certain amount of price of goods is payable in Indian rupees at predetermined rate of exchange the conversion mechanism for foreign exchange into Indian currency is not relevant at all.

3. We have considered the submissions made by both the sides. It has not been disputed by the respondents that 5% amount which is paid to the agent in India is not includible in the assessable value of the goods imported by them. The only dispute relates to the exchange rate applicable for converting the said money into Indian currency. The learned SDR has rightly emphasised that the provisions of Section 14 of the Customs Act, 1962 which deals with valuation of the goods for the purpose of assessment clearly provides that the price shall be calculated with reference to the rate of exchange as in force on the date on which the Bill of Entry is presented. Commission paid to the Indian Agent forms part of the total price for the imported goods. The price is therefore to be calculated with reference to the rate of exchange as in force on the date of presentation of the Bill of Entry.

There is no force in the submission of the learned Counsel that the said provisions of Section 14(1) will not apply to Customs Valuation Rules, as the Customs Valuation Rules have been enacted in pursuance of Sub-rule (1A) of Section 14 of the Customs Act, 1962 only which provides that the price referred to in Sub-section (1) in respect of the imported goods shall be determined in accordance with Rules made in this behalf. This position is also very clear from the decision of the Delhi High Court in the case of Essar Steels Ltd. (supra), relied upon by the learned Counsel for the respondents. It has been observed by the Delhi High Court in the said judgment that GATT Code of Valuation adopted during the Tokyo Round of Multilaterial Trade Negotiations under the GATT (1973-1979) contains elaborate rules to provide for greater uniformity and certainty in the application of Article VII of the Gatt for determining the value of imported goods, "as India is a contracting party to this Agreement, it was necessary for India to implement said GATT Code of Valuation and that context, Sub-section (1A) has been inserted by re-placing Section 14(1)b), in order to enable the Central Government to frame Rules on the basis of GATT Code of Valuation for determination of the price of imported goods. In terms thereof, a new set of Rules called the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 was brought into force on 16th August 1988, the very day on which Section 14(1A) was amended". In view of these facts, it cannot be claimed by the respondents that the provisions of Section 14(1) will not apply to the Customs Valuation Rules. We, therefore, set aside the impugned Order and allow the appeals filed by the Revenue.

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