

N.K. Enterprises and Venkatesh Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-24-2005

Reported in : (2005)(100)ECC241

Judge : S Kang, Vice, M T K.C.

Appellant : N.K. Enterprises and Venkatesh

Respondent : Cc

Judgement :

2. Appellant filed these appeals. The common issue arises in both these appeals therefore, they are being taken up together. The appellant made import of old and used photocopier machines. In the case of M/s. N.K. Enterprises the appellant declared the value of the consignment as Rs. 39,30,665/- and in the case of M/s. Venkatesh Enterprises the appellant declared the value of the goods as Rs. 54,66,718/-. The value declared by the appellant was not accepted by the Customs authorities and in the case of M/s. N.K. Enterprises the value of goods was enhanced to Rs. 50,42,000/- and in the case of M/s. Venkatesh Enterprises the value enhanced to Rs. 71,43,522/-. The adjudicating authority also confiscated the goods on the ground that these are consumer goods and are imported in violation of the Foreign Trade Policy.

3. The appellants are not challenging the confiscation of the goods in view of the decision of the Tribunal in the case of M/s. Vijay Traders Vide Final Order No. 347-352/05-NB(A) dated 15.03.05 where it was held that in view of the DGFT Circular

No. 20 (2004-2009) dated 23.2.2005 the second hand photocopier machines are in the nature of consumer goods.

4. The appellants are challenging the impugned order regarding enhancement of the value of the imported goods. The contention of the appellants is that the value was enhanced on the basis of Chartered Engineer's certificate. The contention is that in the Chartered Engineer's certificate it was specifically mentioned that year of manufacture of imported goods is not available. The goods appear to be manufactured during the years between 1993 and 1996. The contention of the appellants is that when the year of manufacturer is not known, therefore, there is no ground to enhance the value of the goods. The contention is that in the certificate issued by the Chartered Engineering there was no reasoning given for enhancement of the value. The appellants relied upon the decision of the Tribunal in the case of M/s. Vijay Traders (supra) and in the case of National Imaging Systems v. CC, Faridabad Final Order No. 156-157/04-NB(A) dated 25.2.2004 to submit that on the similar grounds where the enhancement was made, the Tribunal set aside the same.

5. The contention of the Revenue is that according to Chartered Engineer certificate the value was enhanced. Therefore, there is no ground to reject the enhanced value. We find that the value of old and used second hand imported photocopier machines was enhanced on the basis of Chartered Engineers certificate. The Chartered engineer certificate shows that there is no year of manufacture of the goods imported which is relevant for the purpose of determining the value of goods. The Revenue is not relying on any contemporaneous import in respect of similar goods. The goods in question are old and used photocopier machine and old and used machines are sold for taking into consideration the condition and usage of the machine. In a similar situation in the case of M/s. National Imaging Systems (supra) the Tribunal set aside the value enhanced by the customs authorities where the value was enhanced in respect of old and used photocopier main frame. The Tribunal held as under : "We find merit in the submissions made by the appellants. The expert's Certificate itself would show that the price declared in the import invoices were not so low as to be considered non-commercial. There is also no allegation or material to support an

allegation that there is any special relationship between the Exporter and Importer or any under hand transaction was taking place. The learned Counsel for the appellant is right in his submission that it is well settled that transaction value can be rejected only for the reasons mentioned in Valuation Rule 4(2) of the Customs Act, 1962 (Eicher Tractors Ltd. v. Commissioner of Customs, Mumbai,(SC) and Tolin Rubber Pvt. Ltd. v. Commissioner of Customs, reported in 2004 163 ELT 289.

In these facts and circumstances, enhancements of values under the impugned orders cannot be sustained, However, as already noted confiscation under Section 111(d) and penalty are sustainable. All the same reduction in the amounts of redemption fine and penalty are warranted in view of the fact that adjudication orders fixed those amounts treating the value of the consignments as the values revised and enhanced".

6. We further find that in the case of M/s. Vijay Traders the Tribunal in similar situation where the value was enhanced on the basis of Chartered Engineer's certificate where the Tribunal held as under : "We have heard both sides. The assessable value has been enhanced on the basis of Chartered Engineer's certificate compared with the evidence of value available with the appraising group. The Chartered Engineers has not furnished the year of manufacture of the goods which is very relevant for the purpose of determining whether their transaction value is required to be rejected. There is no evidence furnished for contemporaneous imports. In these circumstances, the Tribunal's decision in the case of S & S International v. CCE, Final Order No. 366/2005 dated 22.2.2005 holding that in the absence of any evidence of contemporaneous imports, the transaction value is required to be accepted, is squarely applicable to the facts of the present case. The Tribunal's decision in the case of Competent Business Machines v. CC Thiruchirappalli - Final Order No. 18/2005-NB(A) dated 31.1.2005 further buttresses the above view.

Following the ratio of the above decisions, we hold that loading of value is not justified and accordingly, set aside the same." 7. In view of the above decision of the Tribunal, we find that order whereby the value of imported goods was

enhanced is not sustainable and set aside.

8. The contention of the appellant at this stage is that before the decision of the Tribunal in the case of M/s. Vijay Traders, the Tribunal was taking a view that old and used photocopiers can be imported as capital goods and only in view of the DGFT Policy Circular dated 23.2.2005 the Tribunal has taken a view that such goods are consumer goods. Therefore, the submission is in respect of reduction of penalty and redemption fine. Keeping in view the facts and circumstances, of the case, redemption fine is reduced to Rs. 1 lakhs and penalty is also reduced to Rs. 1 lakh in each case.

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