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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-05-1987

Reported in : (1993)(67)ELT418TriDel

Appellant : Sarinsons

Respondent : Collector of Customs

Judgement :
1. The appellants imported on 11-7-1985, 27 packages containing Zip Fastners and by filing a Bill of Entry sought clearance of the same.

Along with the Bill of Entry, they submitted an Invoice No. S/T-0627.

The Customs suspected that the imported goods were undervalued and that quantity or quality of the goods was misdeclared. Therefore, they conducted certain investigations and issued a show cause notice. In this notice they asked the appellants to show cause inter alia, why the assessable value of the goods under import should not be taken as Rs. 3,34,735 as against Rs. 1,28,035 declared by the appellants. They also threatened confiscation of the goods and imposition of penalty.

2. After due process including consideration of the reply to the show cause notice and personal hearing, the Collector (Customs) passed the impugned order. He held that there was misdeclaration, under-valuation and unauthorised importation in respect of the imported goods. He ordered that the goods be valued at Rs.

3,34,735 and further that a part of the imported goods, which were held to have violated Section lll(d) of the Customs Act, be confiscated. He allowed an option of payment of redemption fine in lieu of confiscation and further ordered re-determination of duty on the basis of the value of the goods which were revised upwards. He also imposed a penalty of Rs. 50,000 on the appellants. Hence this appeal.

3. Shri Bharat B. Julka, the Ld. Advocate of the appellants related the facts of the case and submitted that the goods imported by the appellants were rejected goods comprising dead stock. He explained that these goods were earlier imported from Japan into Singapore where they were lying in the docks for 9 months. Then they had to be reshipped back to Japan and in the process the goods were deteriorated. Shri Julka submitted that at this stage when the goods were lying in Japan, the owners were scouting around for the buyers and these were offered to the appellants subject to several conditions. These conditions were that all the 27 cases had to be bought and that no inspection or survey would be allowed but the goods should be sold and purchased on "as is where is" condition. There would be no rebate and only samples would be shown to the appellants. Shri Julka submitted that the appellants were misled regarding colour as the samples shown to them were not representative of the contents of the 27 packages. The Ld. Advocate pleaded that the appellants did obtain the goods at a very cheap price which were highly competitive but emphasised that the degree of risk attached to the transaction was very high and justified the purchase at a low price.

4. Shri Julka submitted that the show cause notice alleged misdeclaration regarding description and value. Referring to Paragraph 2 of show cause notice and Paragraph 2 of the order, Shri Julka submitted that the allegations made and the finding given were wrong in that the goods were described by the appellants only as Zip Fastners and not as Polyester Zippers. He submitted that the non-addition of trade nomenclature to the description did not amount to misdeclaration.

5. In respect of value, Shri Julka submitted that the deterioration of the goods in the circumstances explained by him would show that these goods would not have been bought and sold at normal prices applicable to prime quality goods. He

further submitted that a perusal of the various documents would show that the same goods travelled from Tokyo to Singapore and Singapore to Tokyo. The evidence of the documents signed by the Bank of India and the shipping company would prove this.

6. Shri Julka further submitted that the Department relied on the price-list of the manufacturer. According to the Ld. Advocate this price-list is applicable to prime goods. Referring to the reliance of the Department on the importations made by another party, Shri Julka submitted that there was only one case of importation at a higher price in May 1985 whereas in the present case the importation took place in July 1985. He referred to the importation made by Suhag Traders and submitted that this firm imported just 3600 pieces which were less than 5% of the size of the importation by the appellants. Arguing that their purchases would mean less price, the Ld. Advocate cited the judgment of the Tribunal in Mangla Brothers v. CC, Bombay [1984 (15) E.L.T. 151].

He further argued that in Appeal No. CD-195/83-A (Chandra Traders v.Collector of Customs) Order No. 925/86A dated 18-12-1986 was passed wherein the value of the same item namely Zip Fastners was dealt with.

In that case a large number of Zip Fastners was imported and the Tribunal allowed discount of 50%. Shri Julka submitted that the Collector did not deny the evidence in favour of the appellants and did not disprove the claims made by them. Therefore he did not discharge the onus of proof.

7. The Ld. Counsel emphasised that there was no proof of clandestine payment and not even an allegation was made to that effect. Referring to Paragraph 19 of the order-in-original, Shri Julka submitted that the order took out one line in the statement of the proprietor and quoted it out of context.

8. Shri Julka submitted that the price at which the appellants imported the goods was negotiated genuine price and should be accepted in the absence of any proof to the contrary. Shri Julka making an alternate submission, pleaded that the fine and the penalty imposed and the value revised were all on the harsh side.

9. Shri C.V. Durghayya, Ld. JDR, opposing the arguments, submitted that according to the invoice the imported goods were Polyester Zippers with closed ends. He pointed out a packing specification seized allegedly from the appellants' house (On questioning, the Bench learnt that what was seized was the photostat copy of a packing list and not the original packing list).

10. Shri Durghayya, Ld. JDR, submitted that the appellants declared large number of polyester type Zippers whereas they imported Nylon type which was of higher value by about 10% or so as compared to the Polyester type. He referred to the statement of the appellants as dealt with by the Collector in Paragraph 19 of his order. The Ld. JDR submitted that there was no proof at all that the goods in question were defective or damaged in any way. There was no proof or indication that the appellants obtained the same at a bargain price.

11. Referring to the evidence relied upon by the Department, especially the invoice in respect of Suhag Traders, Shri Durghayya submitted that the available importations had to be seen for purposes of comparison.

He pleaded that some marginal adjustment could be made in view of the difference in the sizes of importation but not to the extent that the appellants claimed. Finally, he pleaded that the deemed value is relevant for Section 14 of the Customs Act.

12. In rejoinder, the Ld. Advocate submitted that the show cause notice did not allege that the Zippers were Nylon Zippers. He pointed out that the appellants never claimed that the goods were defective or damaged.

They claimed only that they were stock lots and rejected lots. He also submitted that the Department could have easily verified whether the imported zippers were of polyester or of nylon.

13. We have considered the arguments of both the sides. After perusal of the show cause notice issued to the appellants and of the impugned order, we find that whereas the appellants relied on the invoice in respect of the declared value, the Customs relied on the following in support of the allegations and findings : (ii) a

packing list recovered from the residential premises on 16-8-1985; (iii) a price list of July 1982 issued by the manufacturer to M/s.

Thakral International Pvt. Ltd; (iv) Invoice No. J-V556 dated 30-5-1985 issued to Suhag Traders, New Delhi.

14. In so far as the statement of Shri Sandeep Sarin is concerned, the finding of the Collector is that the goods imported, though denied to be the same as ordered by them, were in fact the same goods ordered by the appellants. The Collector rejected a submission, made according to the appellants, of the appellants not having contracted the goods that arrived and for which they made a declaration. We have perused the Bill of Entry and find that this document describes the goods as - "Zip Fastners (as per invoice attached)". The concerned invoice filed by the appellants describes the goods as - "YKK Brand Zippers for wearing apparel Polyester Zippers closed ends". It is argued by the Ld. JDR that what was imported were Nylon Zippers. It is also submitted that Nylon Zippers, which are 10% (approximately) costlier than Polyester Zippers. The Ld. JDR in spite of being questioned by us could not show why there would be misdeclaration. There was no document produced before us to show that the imported goods were Nylon Zippers. We specifically asked Shri Durghayya to bring to our attention any examination report, test report or other documents to show that the imported goods were Nylon Zippers. He could not do so. We, therefore, do not attach any importance to the findings of the Collector in this regard.

15. Another piece of evidence relied upon by the Department is a packing list allegedly recovered from the residential premises of the appellants. During the course of hearing we elicited from the Ld. JDR that what was recovered was a photostat copy of a packing list. We did not find the name of the appellants on this copy. There is only the name of M/s. Teji's International Pvt. Ltd. There is nothing to connect this document with the imported goods. We must observe that the appellants too could not give any reasonable explanation of how and why this document was found in their residential premises. In sum this document throws some suspicion but does not amount to any evidence.

16. The third document on which the Department relied was a price list of YKKK relating to July 1982. We have perused a copy of this price list. The appellants' objections to this price list are that it was long before the present importation and that it was supplied to M/s.

Thakral International at their residential address rather than their official address throwing some suspicion on the bona fides of the same.

In so far as the address is concerned, we are not impressed with the arguments of the appellants. We, however, take note that there is some force in their submission that whereas the present importation took place in August 1985, the price list related to July 1982. The appellants argued that the prices of Zippers fluctuated. However, we perused the invoice of Suhag Traders on which too Department relies. We observe that the prices of zippers imported by Suhag Traders are not identical to the prices found in this price list but they are reasonably comparable. No doubt, the appellants submitted that Suhag Traders' importation was a very small one being 5% of the applicants' importations. We do see the reason in their argument that when a large quantity is purchased, the price payable is less.

17. In these circumstances, we are of the opinion that the price list and the invoice price in respect of Suhag Traders cannot be relied on in toto nor can they be rejected completely. This is especially so because the appellants did succeed before us in establishing that their importation consisted of rejected goods and dead stock. We are also convinced that, as submitted by them before the Collector and before us, the 27 cases imported by them had a history of having been exported from Japan to Singapore and having been returned back to Japan. The documents produced by the appellants in the shape of bill of lading No.KS 061, letter dated 27-12-1984 from Bank of India, letter dated 8-4-1985 from Nippon Express to World Shipping Co. Ltd., Tokyo and two other documents convince us that the goods imported by the appellants were same as were concerned in the trade earlier between Japan and Singapore. Therefore, these goods cannot be valued as if they are standard goods of selected varieties.

18. It was the plea of the appellants that the Department totally failed to establish any under-valuation and any unauthorised remittance of foreign exchange. Our

careful perusal of the impugned order does not indicate the existence of foolproof evidence on which to arrive at a conclusion that the valuation as done by the Customs is correct. But in such cases it is not always possible for the Department to arrive at conclusions based on evidence with mathematical precision. The Department has to rely on circumstantial evidence and take a practical and conscientious view. It is not as if the appellants in this case are totally blemishless and innocent. As mentioned earlier, the presence of a copy of the packing list in the residence of the appellants has not been explained. The manner in which the goods were purchased without correspondence, without offer, without negotiations and without documentation does not inspire complete confidence in the total bona fides of the transaction.

19. We, therefore, feel that the proof, with regard to the value of the goods, is somewhere in between what the department has found and what the appellants plead. From a comparative study of the 1982 price list, Suhag Traders' invoice and the appellants' own invoice, we have to arrive at a reasonable conclusion regarding the value. None of these documents can straightaway be accepted, in view of the reasons we had given earlier, to decide the value of the imported goods.

20. Subject to other considerations, the invoice of Suhag Traders seems to give the best possible guidance in fixing the value of the imported goods. We take note that the importation made by the appellants is much bigger one, almost 20 times larger, we also take note that the quality of the zippers imported by the appellants is not as good as the quality of the goods imported by Suhag Traders and we also note that the present consignment is one returned by an earlier customer though that does not necessarily mean that the goods were defective. The appellants also conceded before us that it was not their case that the goods were defective. Therefore, we feel that the price in respect of Suhag Traders less 33 1/3% will be a fair basis for fixing the value of the goods imported by the appellants. Such a conclusion would bring down the value of the goods, for purposes of assessment and ITC to Rs. 2,23,147. We note that the appellants produced licences for goods worth Rs. 1,28,033. This would leave goods valued at Rs. 95,114 as uncovered by licences.