

Samsung Electronics (i) Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-01-2005

Reported in : (2005)(187)ELT220TriDel

Judge : S Kang, Vice-, N T C.N.B.

Appellant : Samsung Electronics (i)

Respondent : C.C.E.

Judgement :

2. Appellant filed this appeal against the adjudication order passed by the Commissioner of Customs.

3. Brief facts of the case are that the appellant made import of three used machines and declared the value at Rs. 61,72,660/-. The Customs authorities on the basis of the import made by M/s. Sony India rejected the value declared by the importer and enhanced the same to Rs. 1,06,71,336/-. On account of misdeclaration the machines were ordered to be confiscated and allowed to redeem fine of Rs. 10 lakh and penalty of Rs. 3 lakh was imposed on the appellant.

4. The contention of the appellant is that there is no basis to reject the transaction value of the imported machines. The machines were purchased by M/s. Pemitech, Korea and the same machines, in the same condition, were exported to India. The machines were not manufactured by M/s. Samsung Korea. The declared value

was rejected on the ground that the machines were reconditioned and this fact was not mentioned in the appraisal report produced by the appellant and this cannot be made ground for rejection of declared value.

5. As the appellant had purchased the machines from M/s. Samsung Korea on a consideration and Samsung Korea further purchased those machines from other trader, therefore, there is no basis to reject the transaction value.

6. The contention of the appellant is also that the appellant declared price of the machines as per the appraisal report supplied by M/s.

Samsung Korea, therefore, there is no mala fide intention on their part to evade payment of duty.

7. The contention of the Revenue is that the appellant produced this appraisal report and according to the appraisal report the original price of the machine was shown to US \$ 11000 whereas the enquiries made from M/s. Panasonic, Japan regarding the price of the machines and the year of manufacture, the customs authorities that a price of new machine in the year of manufacture was JPY 2,50,00,000/- equivalent to approximately US \$ 2 lakh. The contention of the Revenue is that as the basis for declaring the value of the second hand machine is wrong whereby the value of the new machine wrongly taken as 11000 US \$ where the price is about 2 lakh US \$. Therefore, on the basis of this, rejection of transaction value is justified and after rejecting the transaction value the customs authorities after taking into consideration the value of the new machine and after giving depreciation arrived at a value of the machine for assessment of custom duty and the value so arrived on account of cost of reconditioned of the machine. The Revenue relied upon the decision of the Hon'ble Supreme Court in the case of Gajra Bevel Gears v. Collector of Customs, Bombay that the Hon'ble Supreme Court in the case for arriving the value of the second-hand machine held that the method of depreciation is not an arbitrary method for ascertaining the value of the secondhand machine.

8. In this case the dispute is regarding the value of the used machine imported by the appellant. The value was declared by the appellant was not accepted by the

authorities on the ground that same machines were imported by M/s. Sony India at a higher value. On this the customs authorities made an enquiries from M/s. Panasonic Japan the manufacturers of the machines. As per the information supplied by M/s.

Panasonic the machines were valued at US \$ 2 lakh in the year 1993 i.e.

year of manufacture. In the appraisal report produced by the appellant, at the time of import, mentioned the value of new machine as US \$ 1,10,000/- for arriving at the value of second-hand machines in question. We find in view of the information supplied by Panasonic, Japan manufacturer, the original price was much higher than taken into consideration the appraisal report. Therefore, we find no infirmity in the impugned order whereby the declared value was not accepted by the customs. After rejecting the declared value the method of depreciation was applied for taking into consideration the value of new machine in the year of manufacture and this method was approved by the Hon'ble Supreme Court in the case of Gajra Bevel Gears (supra).

9. Further, we find that the Revenue authorities after arriving at the value of the goods added 10% in respect of the cost of reconditioning, we find that there is no evidence on record to show that the machines were reconditioned after purchased from M/s. Pemitech, Korea. Further, as the respondent were adopting the depreciation method after taking into consideration the value of the new machine therefore, the addition of 10% in the value of the goods on account of reconditioning is not justified. Therefore, addition of 10% in value of machine is set aside.

10. There is no evidence on the part of the appellant that they have misdeclared the value of the goods. The value was declared as per the transaction value and the value, which was mentioned in the appraisal report and the same was also produced by the appellant before the Custom. Therefore, the confiscation of the goods and imposition of personal penalty is set aside.

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