

Marlboro Electronics Pvt. Ltd. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-28-2005

Reported in : (2005)(190)ELT404TriDel

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

Appellant : Marlboro Electronics Pvt. Ltd.

Respondent : Cc

Judgement :

1. Heard both sides. Appellants filed this appeal against the adjudication order passed by the Commissioner of Customs, Jaipur whereby a penalty of Rs. 1,00,000/- was imposed on the appellant.
2. Appellant filed shipping bills under DEPB scheme for export of Digital Electronics Watches and declared the price at Rs. 410/- per piece. The goods were examined by the Customs authorities and market enquiries were conducted and thereafter it was found that the goods were over-priced and the same were allowed to be exported on provisional basis. Thereafter, the Adjudicating Authority approved the value at Rs. 30 per Digital Electronic Watch for the purpose of DEPB benefit and imposed a penalty of Rs. 1 lakhs.
3. The contention of the appellant is that they are not challenging the order whereby under the DEPB benefit, the value was fixed by the revenue in respect of goods. They are only challenging the imposition of penalty on the ground that

there was no misdeclaration on their part in respect of the goods. In support of their claim, a chartered Accountant certificate was submitted before the adjudicating authority to show that the manufacturing cost of the digital electronic watch comes to Rs. 375/- per piece. Their contention is that the Commissioner has not taken into consideration the Chartered Accountant Certificate.

The contention of the appellant is that as per the market enquires report conducted by the revenue, similar or identical watches were not available for sale in the market. The contention of the appellant is that no similar or identical goods are available in the market hence, the digital watches exported by the appellants cannot be compared with other watches available in the market for sale. The contention is that the appellant had not misdeclared the value of the exported goods, therefore, there was no requirement for imposition of penalty.

4. The contention of revenue is that the adjudicating authority approved the value at the rate of Rs. 30/- per piece and accepted this value, therefore, in the shipping bills the appellant declared the value at Rs. 410/- per piece. In such circumstances, it is a case of misdeclaration of the value of the digital electronic watches.

5. We find that before the adjudicating authority the appellant produced evidence by way of Chartered Accountant certificate in support of their manufacturing cost of the watch at Rs. 375/-. This evidence is not looked into by the Commissioner in the impugned order. Further, market enquiry which was relied upon by the revenue specifically mentioned that identical or similar watches were not available for sale in the market. Therefore, in such circumstances, the reliance of market enquires conducted in respect of digital electronic watches exported by the appellant will not help the case of the revenue. As the appellant has foregone the claim in respect of DEPB benefit on the value declared by them, therefore, we are not going into this. In these circumstances the market enquiries relied upon by the revenue has no basis as similar or identical goods are not available in the market for sale. Chartered Accountant certificate was not taken into consideration by the adjudicating authority which is near the value declared by the appellant. Therefore, we find that imposition of penalty is not sustainable. Penalty imposed on the

appellant is set aside and the appeal is disposed of as indicated above.

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