Gupta Steel Vs. Commissioner of Customs

Gupta Steel Vs. Commissioner of Customs

SooperKanoon Citation : sooperkanoon.com/39713

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-14-2005

Judge : J Balasundaram, Vice, A M Moheb

Appellant : Gupta Steel

Respondent : Commissioner of Customs

Judgement :

1. These appeals arise out of the order of the Commissioner of Customs (Appeals), Ahmedabad. Briefly the facts are that the Assistant Commissioner/Deputy Commissioner, Bhavnagar, has finalised a provisional assessment in regard to the assessment of a ship brought for breaking up by the appellants. The appellants entered into a MOA with the seller of the ship agreeing to pay a certain price. After the ship is delivered, a survey was conducted which is stated to have revealed that the gear on board the ship was not in accordance with the terms in the MOA. The appellants then seemed to have entered into a second MOA according to which the price payable is reduced. The original authority has accepted the revised value for the ship shown in the amended MOA. The department went in appeal against this order to the Commissioner (Appeals). In the impugned order, the Commissioner (Appeals) upheld the contention of the department that the lower authority erred in accepting the value declared in (he revised MOA and directed the original authority to finalise the assessment on the basis of the value shown in the original MOA. Hence this appeal.

2. The contention of the appellant is that the Commissioner (Appeals) has directed the lower authority to finalise the bill of entry on the basis of his findings. The department ought to have issued a demand for the differential duty its accordance with the findings of the Commissioner (Appeals). It is also argued that the revised MOA was drawn on the basis of a survey conducted by approved surveyors which indicated that the vessel's spare propeller was of steel whereas in the MOA the same is shown to have been made of magnesium bronze. On the basis of this survey report, the value of the ship has been brought down by US$ 33,01,292/- in the revised MOA from the original price of US$ 33,53, 587/-. The Commissioner (Appeals) held that the MOA entered into between the supplier and the buyer did not provide for any reduction in the price of the ship on the basis of any survey which was done after the vessel was delivered to the buyer. The Commissioner (Appeals) relied on the decision of the Tribunal in the case of C.C. v.Atom Manohar Ship Breakers 2003 (156) ELT 151 wherein the Tribunal held that the value declared in the original MOA has to be taken for the purpose of assessment and not the value shown in the revised MOA which has been drawn after the ship has been imported into the country. The appellants on the other hand rely on the decision of the Tribunal in the case of Shree Ram Sleet & Rolling Industries v. C.C. Jamnagar (order No. A/523AVZB/2004 dated 15.7.2004) in which the Tribunal held that on a conclusion of proceedings under Section 129D of the Customs Act in Revenue's favour, a demand is required to be issued and without such a demand having been issued, duty cannot be demanded under Section 28 of the Customs Act. The Tribunal in this case has not gone to the merits of the issue of valuation but decided the appeal before it only on whether a demand under Section 28 has been issued or not. The appeal in that case arose out of a different context.

3. The learned DR argued that the Commissioner has directed the lower authority to finalise the provisional assessment on the basis of the value shown in the original MOA as that value constitutes the transaction value under Rule 4 of the Customs Valuation Rules. Upon this direction, the assessment has been finalised. Any demand resulting out of such finalisation will be issued under Section 28. At the time when the Commissioner (Appeals) decided the issue, directing the lower authority to finalise the assessment, no demand could have been issued.

He pleaded that the appellants' reliance on the case of Shree Ram Steel & Rolling Industries is misplaced.

4. We have heard both sides and considered the rival contentions. We observe that the appeal is against the order of the Commissioner (Appeals) who directed the lower authority to finalise the assessment in a particular manner. The question of issue of any demand on the basis of this order does not arise. After finalisation if any differential duty has to be paid, it has to be paid by the assessee in terms of the conditions under which provisional assessment is resorted to. We are unable to agree with the contention that the order of the Commissioner (Appeals) is wrong or improper on the ground that a subsequent demand has or has not been issued. The issue before us is only whether the Commissioner (Appeals) is right in holding that the price declared in the original MOA should constitute the transaction value. We observe that the appellants have not made out any case as to why the Commissioner was wrong in upholding the price declared in the original MOA as transaction value for the purpose of assessment. We hold that this decision of the Commissioner (Appeals) based on the Tribunal's decision cited supra is legal and proper. We, therefore, see no reason to interfere with it.