

Vecron Indus. Ltd. Vs. Commissioner of Cus. (imports)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-21-2005

Judge : J Balasundaram, Vice-, S T T.V.

Appellant : Vecron Indus. Ltd.

Respondent : Commissioner of Cus. (imports)

Judgement :

1. The appellants herein had applied for registration of their contract under project imports for initial setting up of a plant for the manufacture of Stamping Foils and Metallised packaging, and filed two Bills of Entry dated 7.12.1994 for import and clearance of second hand machinery namely second hand Lacquering machines and 1 vacuum Metalliser purchased from M/s. Metaplast, the manufacturer of such machines. The importers entered into a collaboration agreement with M/s. Metaplast for supply of second hand machinery and Engineering & Technology transfer for an aggregate value of DM 9,00,000/- out of which DM 2,00,000/- towards Engineering & Technology. As per Appendix 2 to the contract, between importers and the manufacturers of the machines, the Engineering & Technology pertains to manufacture of stamping foils and films. Metaplast was to supply know how and training of the appellant personnel to learn know how for metallising and lacquering. The department was of the view that it was a package deal for supply of machinery and know how for manufacture of foils and metalised films and that the conditional price of the machine was not acceptable and that the payment of DM 2,00,000/- need to be added to the value of the machine in terms of Rule

9(1)(e) of the Customs Valuation Rules, 1988. After grant of personal hearing the Assistant Commissioner of Customs ordered that an amount of DM 2,00,000/- paid by the importers to the suppliers under the agreement should be added to the assessable value under Rule 9(1)(e) of the Customs Valuation Rules, 1988. The Commissioner (Appeals) upheld the addition of the amount; minus cost towards the training, theoretical and practical, of personnel. Hence this appeal.

2. None appears for the appellant in spite of notice, we heard the Ld.

SDR and perused the records. From the contract it is seen that both parties entered into collaboration for the manufacture of the metallized products for which M/s. Metaplast supplies the second hand machinery. The supply of know how and machinery are interrelated in the single contract, in the sense that it is a contract for supply of machinery as well as know how for the manufacture of foils. The Assistant Commissioner has gone through the brochure of the foreign supplier and found that the supply of technology and equipment is inevitably related to service and hence the contract shows that the supply of machinery and technical know how go together invariably. This being so, the payments have rightly been held to be a condition of sale of the imported goods by the buyer to the seller and hence required to be included in the transaction value as per Rule 9(1)(e) of the Customs Valuation Rules. Nothing is coming forth from the grounds of appeal filed before us as to why the payment is not a condition of the sale of the imported goods. Therefore no ground has been put forth before us to dislodge the findings of the lower appellate authority, which we uphold. The appeal is therefore dismissed.

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