

Marvelous Creations Vs. C.C.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-05-2005

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

Appellant : Marvelous Creations

Respondent : C.C.

Judgement :

2. Appellant filed this appeal against the order in appeal passed by the Commissioner (Appeals). The appellants are basically challenging the imposition of penalty of Rs. 2 lakh under Section 114 of the Customs Act, 1962. The brief facts of the case are that appellants filed 2 Shipping Bills for export of Cotton T-Shirts and declaring the Unit price at the rate of Rs. 260/- per piece. Initially, the goods were assessed. However, subsequently, the goods were re-examined and Market Enquiry was conducted and as per the market enquiry market price of the T-Shirt is only Rs. 29 per piece. The adjudicating authority after relying upon the market enquiry held that the market value of the goods is only Rs. 8,78,178/- that is less than the draw back claim and disallowed the claim of drawback. The adjudicating authority also held that the consignments under question are also liable for confiscation and imposed penalty of Rs. 2 lakhs.

3. The contention of the appellant is that they have purchased the T-Shirts at the rate of Rs. 250/- per piece from M/s. PST Apparels and also produced the invoice to this effect. The contention is that as their foreign buyer agreed to buy the T-Shirts at the rate of Rs. 260/- per piece and subsequently the goods were also to

be export of provisional basis and they received sale price from the importer. The contention is that in these circumstances the impugned order disallowing the drawback and the imposition of penalties not sustainable. The appellants relied upon the decision of the Tribunal in Page 498 the case of Brooks International v. CC, ICD, Tughlakabad, New Delhi the goods are not prohibited the goods, hence are not liable for confiscation.

4. The contention of the Revenue is that the appellants claimed that T-Shirts in question are purchased from M/s. PST Apparels and during investigation; it was found that Unit was not functioning at the given address. The contention is that in this situation, it cannot be verified whether the appellant purchased the goods at the rate of Rs. 54/- per piece. The contention is that the market enquiry is conducted which shows that price of T-Shirts is only Rs. 29/- per piece. The Revenue also relied upon the decision of the Hon'ble Supreme Court in the case of Om Prakash Bhatia v. Commissioner of Customs, Delhi to submit that in case of export if there is mis-declaration in respect of the price of the goods, are liable for confiscation.

5. In this case the claim of the appellant is that T-Shirts in question were purchased by from M/s. PST Apparels and during investigation it was found that Unit was not functioning at the given address. The market enquiry was conducted by the Revenue, which shows that the price of the goods is only of Rs. 29/- per piece. In these circumstances, we find no infirmity in the impugned order whereby the price of the goods were determined after taking into consideration the market enquiry. The appellant also pleaded that the imposition of penalty is not sustainable and relied upon the decision of the Tribunal in the case of Brooks International v. CC, ICD, Tughlakabad, New Delhi (Supra). We find that Hon'ble Supreme Court in the case of Om Prakash Bhatia v. Commissioner of Customs, Delhi (Supra) held that in case of mis-declaration of the value of the goods under export, the goods are liable for confiscation. In view of the above decision of the Hon'ble Supreme Court as the goods are liable for confiscation, therefore, the plea of the appellant that no penalty can be imposed is without any merit. After taking into facts and circumstance of the case, we find that question of penalty does not call for any further reduction. The appeal is dismissed.

