

**Dinesh International Ltd. Vs. C.C.E.**

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**SooperKanoon Citation :** [sooperkanoon.com/41265](http://sooperkanoon.com/41265)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Dec-23-2005

**Reported in :** (2006)(108)ECC79

**Judge :** N T C.N.B., M Ravindran

**Appellant :** Dinesh International Ltd.

**Respondent :** C.C.E.

**Judgement :**

The appellant imported three consignments of copper scraps of "BIRCH" Varieties - two from Singapore and one from Israel, during the period November - December 1998. The purchase price varied from US \$ 1160 to US \$ 1180 PMT. Customs authorities accepted the prices and assessed the goods to duty and allowed their clearances. Subsequently, notice was issued on the ground that, as per the London Metal Exchange (LME), price was higher than the assessed values. The appellant was, therefore, directed to deposit the differential duty or show cause as to why the consignments should not be re-assessed and duty short-levied demanded. The appellant resisted the demand holding that original assessments which were based on transaction values were correct and no short-levy was involved. It was also contended that it is well settled that LME prices cannot be the basis for assessment. Appellant also mentioned that there were contemporaneous imports at comparable prices.

2. In adjudication, the Deputy Commissioner held that reliance on LME prices is justified and confirmed the duty demand accordingly. The appellant filed an appeal before the Commissioner (Appeals). In the appeal, the appellant took a specific plea that their values were comparable to the values of other imports. They referred to four Bills of Entry in this regard where the assessments were around US \$ 1140 to US \$ 1200. All the same, the Commissioner (Appeals) held against the appellant, with the observation that the Deputy Commissioner had at the time of hearing of the case informed the appellant that there was contemporaneous import at US \$ 1490 and that being the case, the differential duty demand is sustainable.

3. The present appeal is directed against that order. The demand is contested on several grounds. The very first is that adjudication and appellate authorities cannot adopt a ground different from the one taken in the show cause notice. It is also being pointed out that, on merits, there was no case, particularly when their value was around other imports taking place contemporaneously.

4. We have perused the record and considered the submissions made by both sides. Appellant is right that the present demand is on a different basis from the one originally raised in the show cause notice. That apart, there is also evidence that imports were taking place at varying prices. There was no evidence brought on record by the revenue which is indicative of any suppression of price in appellant's transactions. In a situation of fluctuating prices, there was no justification to pick and choose one price for the assessment of the goods. The law specifically stipulates acceptance of transaction value which is not vitiated by non-commercial considerations. There is no material to support such a view. There were other imports also at comparable prices.

5. In view of what is stated above, the impugned order is unsustainable. It is set aside and the appeal is allowed.