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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-14-2006

Judge : R Abichandani, M T K.C.

Appellant : Winstar Electronics

Respondent : Commissioner of Customs

Judgement :

1. When this appeal was called none appeared for the appellant. No proper reason was filed for absence of appellant or his representative.

It was merely mentioned by proxy advocate that advocate of appellants had gone out of the station. No request for adjournment was filed. We, therefore, do not find reasonable ground for adjourning the case and accordingly deciding the case after hearing the learned Authorised Representative of the Department.

2. Show cause notice was issued to the appellant demanding duty of Rs. 2,64,250/- and proposing penalty on them on thg eround that they have misdeclared the value of the consignment for 21000 pieces of watch cases with metal band imported under Bill of Entry No. 1273 dated 11-9-97. During investigation Shri O.P. Agarwal, Proprietor of the appellant firm stated that he declared the CIF value of the goods as per invoice received by him from the supplier. On investigation, it was found that the supplier of the goods had declared much higher export price in the export documents submitted by him before the Hong Kong Custom. It was alleged in the show cause notice that the value

declared in the Bill of Entry was equivalent to Rs. 3,41,901/- CIF whereas the FOB value shown in the export declaration by the supplier in Hong Kong was equivalent to Rs. 8,03,790/-. The case was adjudicated by the Additional Commissioner of Customs, Jaipur who confirmed the demand and confiscated the goods imported under Bill of Entry No. 1273 dated 11-9-1997 under Section 111(m) of the Customs Act but allowed these to be redeemed on a redemption fine of Rs. 3,50,000/-. He also imposed penalty of Rs. 2,64,250/- on the appellants under Section 114A of the Customs Act. The Commissioner (Appeals) under the impugned Order rejected the appeal filed by the appellant.

3. In the appeal petition the appellants have taken a ground that the goods were assessed under Bill of Entry No. 1273 dated 11-9-1997 and allowed clearance on 15-9-1997. However, the show cause notice was issued to them on 29-5-2002 demanding differential duty and proposing penalty is time barred. 21,000 pieces of watch cases with metal band were dispatched from Hong Kong on 2-9-1997 and 100% examination was conducted by the Custom authorities in India on 12-9-1997. The reliance placed by the department on declaration alleged to have been filed by supplier of the goods and reportedly to have been obtained by the DRI from Hong Kong Custom, was filed on 10-9-1997, whereas the goods were dispatched on 2-9-1997. The declaration filed by supplier of goods with Hong Kong Customs was for two items namely; (1) 21,000 pieces of metal watch cases and (ii) 21000 metal watch strap. The appellant imported 21,000 watch cases with metal band. Thus, the declaration filed by the supplier of the goods does not covers the goods imported by the appellant. On the question of filing declaration subsequent to dispatch of goods, the adjudicating authority has recorded that as per Hong Kong customs regulations the exporter was permitted to file export declaration within 14 days. This is not"bcsgd on an{ qtctwtor{ authority. It uas also pleadgd that leithep thg aopies od aorrespondgnae were supplied nor any documents to show that permission to Indian customs for use of the declaration was granted by the competent authority of Hong Kong Customs. The"arpellant imported goods for which documents were received through Bank and payment thereof remitted through bank. The goods tallied in description and on physical examination as shown in the invoice. Accordingly, the assessment of duty was made on the value of goods in terms of Section 14(1) of the Customs Act. On

reading Rule 3(1) and Rule 4(1) of the Customs Valuation rules, it is clear that a mandate has been cast on the authority to accept the price actually paid. Rejection of transaction value on the basis of the declaration which itself is not for the goods imported by the appellant because of the material difference in the description of goods is against the law laid-down by the Supreme court in the case of Eicher Tractors Ltd. v. Commissioner of Customs, Mumbai . The Hon'ble Tribunal has consistently held that transaction value can be rejected if any of the situation particularly in Rule 4(2) of Valuation Rules exist. Reliance was placed on the following decisions:(T) Balkishan Dass and Sons v. CC, New Delhi 4. The adjudicating authority has erroneously held that burden has been discharged by producing the alleged declaration. Assessment of Bill Entry is an appealable order. Since no appeal has been filed by the department against the assessment Order of Bill of Entry, the same has attained finality. The demand of differential duty is not sustainable and imposition of penalty equal to duty in terms of Section''114A is not swstainable as this Section is attracted when the demand is confirmed by reason of collusion or any willful mis-statement or suppression of facts. In the present case, goods were examined physically 100%. There is no case for short levy and accordingly provksion of Section 28AB are wrongly invoked. Since there is no suppression of facts on mis-declaration of value, the goods cannot be held liable for confiscation and the imposition of redemption fine is bad in law.

5. Heard departmental representative of Revenue. He reiterated the findings given by adjudicating and first appellate authority.

6. We find that under Rule 4(1) of the Custom Valuation Rules the transaction value of imported goods shall be the price actually paid or payable for the goods when goods sold for export to India adjusted in accordcnce wkth thg provisions of Rule 9 of these rules. Since the export value of the goods at Hong Kong has been obtained on investigation by the DRI through the official channel from the customs authorities at Hong Kong. That is correct FOB value at Hong Kong and assessable value for import into India has to determined on that basis.

The goods imported by the appellant are the same goods, which were exported from Hong Kong and for which the export value was declared.

This is apparent from the fact that in the Bill of Entry and the Airway Bill, same supply No. and same marks and numbers as declared in the export declaration at Hong Kong are mentioned. In the invoice which was submitted by the importer the description of the goods is shown as watch case with metal band but the marks and numbers and Airways bill number are same as in the export declaration filed by the exporter before the Hong Kong authorities. The description given in the expopt declapation iq metal uatch case, metal watch strap, so thks dgsaription iq same as watch case with metal band as the watch case and metal strap are both in declaration as well as in the invoice. Quantities are also same. Therefore, the plea of the appellant that these are not the same goods which were exported cannot be accepted. The appellant had also claimed that the adjudicating authority had given a finding thct in Hong Kmng export declaration can be filed within 14 days after export of the goods is not based on any legal proposition. In this respect, Revenue produced the letter from Consulate General of India in Hong Kong where the extract of the Order issued by the Hong Kong Government regarding export declaration were reproduced which is as under: Under the Import and Export (Registration) Regulations, Chapter 60, every person who imports or exports any article other than the exempted article is required to lodge with the Commissioner of Customs and Excise an accurate and complete import/export declaration within 14 days after the importation/exportation of the article.

7. This is corroborated by the declaration filed by the exporter.

Therefore, the plea of the applicant regarding incorrect appreciation of facts and not identifying the goods imported into India that the goods exported as not being same is rejected.

8. The applicant have also taken the plea that the principles of natural justice were violated as they were not given copies of the relevant correspondelce exahanged between the Consulate General of India in Hong"Kong cnf Hong"Kong Customs. However, we find that at the time of personal hearing before the adjudicating authority these documents were shown to Shri B.S. Gupta, the authorized Consultant of the appellants and it is clearly recorded that the said documents have been examined by him. Thus, there has been no violation of principles of

natural justice.

9. Under Section 28 of the Customs Act, where duty has not been levied or has been short levied or the interest has not been charged or has been part paid by reason of collusion or any willful mis-statement or suppression of facts by the importer or the exporter or the agent or employee then period of five years is applicable for demanding the duty. In this case, the importer has wrongly declared the value of imported goods in collusion with the exporter from Hong Kong by furnishing wrong invoice for the value misstating the correct value of goods. Therefore, the duty was correctly demanded by applying extended period of 5 years from the relevant date. In view of this, the goods were correctly confiscated under Section 111(m) of the Customs Act and penalty under Section 114A was also correctly imposed on the appellants.

10. We, therefore, find no reason to interfere with the findings of the lower authorities which are based on facts and correct appreciation of law.