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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-22-1988

Reported in : (1989)(39)ELT622TriDel

Appellant : Ashok K. Singh

Respondent : Collector of Customs

Judgement :

1. The appellant is a Non-Resident Indian who imported a second hand Computer System from U.S.A. for using it in an industrial venture for the generation of computer soft-ware. He obtained an import licence to cover the goods and it appears that he paid for the goods out of his own resources. He filed a Bill of Entry to cover the goods on 1.6.1987, and the goods for which the application was filed were as follows : He declared a value of $ 8,500 and the assessable value of Rs. 1,27,444.

2. The Customs did not accept the value and after issuing a show cause notice the Addl. Collector of Customs passed orders confiscating 8 Nos.

work system, 5 Nos. terminals and 6 Nos. printers whose value was fixed at Rs. 5,29,450. In addition there were confiscated 2 Nos. Terminal T-7 valued at Rs. 12,497 and 1 No. PCB interface card valued at Rs. 2000 but the importer was given an option for redemption of all the goods on payment of a fine of Rs. 20,000. The Addl. Collector further imposed a penalty of Rs. 30,000 on the appellant. Hence the present appeal.

3. We heard Shri K. Srinivasan, the Ld. Representative of the appellant and Shri C.V. Durghayya, the Ld. Departmental Representative.

4. The grounds alleging the violation of the principles of natural justice by the Addl. Collector were not pressed by Sh. Srinivasan. He made a statement to that effect.

5. The Customs' refusal to accept the price mentioned in the invoice was due, mainly, to the appellant himself being the exporter, and importer.

6. Other reasons for the action, apparent from the documents are that in spite of being asked to do so the appellant did not produce the original purchase invoice in respect of the computer system. The customs further relied on the contents of a reference book named "Micro-computer Buyer's Guide" by Tony Webster. In this book the price of Wicat System 150 (new) was shown as ranging from US $ 9,450 - 20,000. Price of the Terminal and Workstation (item 1 & 2 of the invoice) was worked out on this basis. The Customs worked out the price of the Printer with reference to the price of Tandy DMP-2200 Printer which was considered as a similar unit. The value of the entire consignment was worked out to Rs. 6,44,929/-. The details of the working out as given in the impugned order are as follows : 'The final unit prices arrived at by Special Investigation Branch in terms of Section 14(l)(b) read with Customs Valuation Rules, 1963 are as follows :b) Terminal MG-8000) US $9450.00Terminal T-7) (Considering that the terminal is a periphery and is to be used with main system and taking the minimum of price range given in the Guide).c) Anadex Printer DP-6500- US$1695.00d) Anadex Ribbons- US $ 18.00 per Doz.e) One Printed circuit board - Rs. 2000.00 (appraised).

Considering the items above are used for last three years, a reasonable depreciation is to be given on the above unit prices.

After deducting 20% depreciation every year as per practice on items (a), (b) and (c) above, the total value of the goods arrived at (after converting into Indian currency) is Rs. 5,55,633.00 (FOB) (Annexure 'D' attached). The total C.I.F value of goods works out to Rs. 6,44,929.00 after adding standard freight and insurance charges @ 15% and 1-1/8% respectively claimed by the importer himself in the bill of entry".

The Printed circuit Board valued at Rs. 2000 was found not to have been declared in the invoice. Besides one Terminal Model T-7 was found and this too was not invoiced.

7. Before the Collector and before us the appellant relied on the certificate dated 16th July, 1986 given by one M/s. Helias Doundoulakis the Consulting Engineer who inspected the equipment and certified that the machines were of 1983 manufacture. He also recorded the fair market price of the items also giving the price of comparable machines (when new). The Ld. JDR argued that this certificate was not acceptable as the prices mentioned therein did not represent the deemed value. We have examined this certificate. The Collector did not pass a specific order about the validity or otherwise of this certificate. The Departmental Representative's argument does not appear to be prima facie acceptable as used computers when traded internationally, and imported into India have to be assessed on the basis of invoice value unless such invoice is, for valid reasons, found to be unreliable. It is now well established that an invoice must be accepted unless there is a good reason not to do so. Besides, certificates given by a competent expert should not be brushed aside without reason.

8. The Collector also rejected the export licence issued by U.S.Department of Commerce which the appellant produced as evidence of the declared value. The Collector's objection was that the U.S. Department of Commerce merely accepted the declared price and did not verify the same. The appellant during the course of personal hearing before the Addl. Collector produced a photo copy of a U.S. Embassy certificate dated 6.10.1986 stating that the export licence had been issued after proper evaluation examination etc. and that U.S. export regulations considered the net value of the product as the actual selling price less establishment charges or correct market price, whichever is larger, to the same type of purchaser in the U.S. The Addl. Collector rejected this evidence holding that the certificate was an after-thought and also on the ground that, it does not prove, beyond doubt, that the said price is the normal price in the international market or even the correct price chargeable to any other buyer. The Additional Collector also observed that "there was no other document to corroborate the U.S. Embassy's certificate or to show that the net value in the export licence was

arrived at after the prescribed exercise".

9. In our opinion the Addl. Collector was not correct in rejecting the evidence of the U.S. Department of Commerce read with the certificate granted by the U.S. Embassy. Both these institutions are governmental and are manned by very senior Govt. officers. It should not be assumed that they would give a false certificate. There is nothing to indicate that the certificates were carelessly or wrongly granted.

10. We have also perused copies of the certificates given by Wicat System dated July 8, 1987 to the effect that they had discontinued the manufacture of 3-6 user workstation known as their model 150-W. They also certified that this system was not manufactured since Sept. 1985 and was now obsolete with little or no commercial value. Similarly ANADEX INC. USA gave a certificate, undated, to the effect that Anadex DP-6500 (Printer) has been discontinued from manufacture since November, 1985 and the fair market value for the machine in good working order is approximately US $ 300 only. These certificates were not accepted by the Addl. Collector as not being independent or impartial. We are of the view that these documents cannot form the primary evidence but can be used as corroborative evidence.

11. We had gone through the grounds raised by the appellant and the contents of the Additional Collector's order at some length to show the merits of the case of each side. The basic question involved is whether the invoice value should be accepted. No doubt the appellant is both the exporter and importer of the goods. Such a situation may create a little suspicion but such suspicion should not by itself lead to an adverse inference. The facts relating to value should be verified with the help of evidence.Computer Karishma Pvt. Ltd., Bombay v. Collector of Customs, Bombay (Order No.763/87-A), it was, therein, observed as follows : "The appellants placed on record a Blue Book "Computer Price Guide", July 1985 Edition, published by Computer Merchants Inc., New York, which gives ruling retail market prices of second hand computers along side their prices when new. This book says that prices of used Computers were liable to fluctuate from day to day and that the quotations which it gave were representative of the "snap-shot

picture" of the market conditions as obtaining prior to the date of publication. The book gives two quotations for Model 4331-1, IBM as under : 13. Therefore, it does appear to be normal that the price of a used computer dips steeply as compared to the price of other goods. In the instant case the appellant has produced a number of documents, to which we referred earlier, in support of the in-\voice produced by him. In our opinion these constitute acceptable evidence whereas Customs have not succeeded in proving that the invoice value was false. In these circumstances we order that invoice value should be accepted and assessment done accordingly.

14. In respect of the interface card it is the plea of the appellants that the same is a spare part and is covered by the licence. It is, however, admitted that the invoice did not mention it. The Terminal T-7 was not mentioned in the invoice. The appellant pleaded that this Terminal was sent by mistake instead of the Terminal mentioned in the invoice but submitted that this terminal is compatible with the computer though it is not as good as Model MT-8000 which was invoiced.

We note that this terminal was not specifically declared. This omission, in our view, cannot be considered mala fide as the duty difference, if at all, would be insignificant as between the two comparable and compatible models. The Additional Collector himself took a lenient view in this regard. We order that the Interface card be released after payment of duty on the appraised values.

15. As a result, the confiscation of the goods is set aside as also the fine therefor. (Assessment of the interface card should be done at the appraised value). Assessment of the remaining goods should be done at the declared value. The penalty is set aside. The appeal is allowed.