

Prabhat Publicity Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-24-2006

Reported in : (2006)(112)ECC120

Judge : A Wadhwa, S T S.S.

Appellant : Prabhat Publicity

Respondent : Commissioner of Central Excise

Judgement :

1. A Bill of Entry No 560 dt. 4.3.04 was filed seeking for clearing a printing Machine manufactured in 1995 on a declared CIF value of Rs. 19.96 lakhs.

1.2 The goods were examined on 17.3.04 in presence of a chartered Engineers and Asst. Commissioner of 1 CD & CHA Representative. The declared machine was "1 Royal Zenith 5 color offset printing machine with all standard electrical and mechanical accessories 28'x40' year of manufacture 1995 & Sr. No. 368571 and 1 used Adast dominant 715, one color offset printing machine with all standard Electrical & Mechanical accessories, 19"x26" year of manufacture 1995. On examination it was noticed- i the specification like year of manufacture, Sr. No. & other were not there on the machine.

iii 4 steel plates having embossed "Royal Zenith" were found pasted on the machines and appeared to be freshly pasted and not part of the original machine.

- iv One more plate pasted similarly was found to have the following specifications: 4. Schaltplane 313.09-04 Made in the German Democratic Republic
- (a) These particulars are freshly engraved on new plates. As such it cannot be said that this is a "Royal Zenith" machine as declared by the importer.
- (b) The machinery found to be as per description as given in the Invoice, Packing List etc. in other respects such as size etc. and no part appears to be missing.
- (c) The value declared by the importer as per their invoice is Rs. 19, 96,100/- However the goods appeared to be highly undervalued due to various factors as given below. It was noticed that the weight of the machines is 34 Mts. Approximately. Therefore it is seen that the value declared by the Importer is close to the scrap value of the material.
- (d) It was seen from the Internet that similar give colour machines are being quoted at a very high price for sale. For example, at the site www.dennis-storch.com one 1990 Akiyama 5 colour 28"x40" was quoted at \$ 185000 (INR 84,08,250/-). Further at the web-site www.alenterprises.com one 1984 Planeta 154 Super Variet - 5 colour, 28"x40" was quoted at \$ 120000 (INR 54,54,000/-).
- (e) Further Deputy Commissioner, Gr. 5A, Customs House, Chennai had also replied to a specific query regarding the practice followed in respect of valuation etc., vide letter No. S.MISC.3/2004-Gr 5A dated 9.1.04. In this letter he has stated that "based on a specific intelligence to the effect that there is large scale under invoicing of used printing machines, a detailed investigation has been conducted in this Customs House and based on the evidence available a minimum guidelines value is being taken for various types of used printing machines as mentioned below: It is further clarified that the above-mentioned values are only being followed as a minimum guideline value and the correctness of value declared is being verified before accepting the value. It is also clarified that no used printing machine is being cleared less than the value indicated above in this Customs House.
- In view of the facts discussed above a doubt was created regarding the truth and accuracy of the declared value. Therefore, the importer was asked to submit

original manufacturer's invoice and catalogue, original insurance certificate and any other document in support of the transaction value in terms of Rule 10A(1) of the Customs Valuation Rules 1988. The importer failed to submit manufacturer's invoice and also any other document to indicate price at the year of manufacture. The importer was further asked vide letter dtd. 7.4.04 to produce the original catalogue. It was also seen that the importer had submitted only the proforma invoice in which it was written "Payment in advance by Bank transfer".

Therefore the importer was also asked to submit the details of payment made including Bank attested invoice etc. The importer submitted reply to this stating that - "Reference to the aforesaid, the original Catalogue is not available with us and we have already submitted operational manuals from which the machines could be verified. As for terms of payment were initially in advance payment but subsequently on negotiation terms of payment were made to D/A. The original documents is not been released from the bank and we shall submit them in due course of time." The importer has filed to submit the same so far. The importer has not even disclosed the name of the Bank through which documents on payment has been made.

(f) In view of this and the facts as discussed above it appears that the value of the imported goods cannot be determined under the provisions of Sub-rule (1) of Rule 4 *ibid* in terms of Rule 10A (1) *ibid*.

1.4 (a) Since these were old and used machine, it was not possible to determine the value in terms of Rule 5, as the value of identical goods as no old and used goods can be identical. No. Contemporary import prices of similar goods were available and as such it was not possible to fix the value in terms Rules 6 *ibid*. Further the old and used printing machine are usually sold after assembling them with other components required to make them functional and not as such in imported condition and therefore Rule 7 based on deductive value is also not applicable. Accordingly the value was determined only in terms of Rule 1. Value of imported goods determined under the provisions of Rule 8 should to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under Rule 8 may be those laid down in {Rule 4 to 7A} inclusive but a reasonable flexibility in the application such methods would be in conformity with the aims and provisions of Rule 8.

(b) Similar goods- The requirement that the similar goods should be imported at or about the same time as the goods being valued flexibility interpreted; similar Imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; the customs values of similar imported goods already determined under the provision of (Rules 7 and 7A) could be used.

(b) Further after going through the National Import Data Base (NIDB), it is seen that the following four colour machine (which is less expensive than five colour machines) has been assessed at value as given below: Sr.

Customs Bill of Entry	Quantity	Unit	Value	No.	House No.	Date
1(4 colour)	Rs. 33,00,680/-	16-10-03	c)	A	Valuation Committee	was constituted by the Department consisting of Asst. Commissioner (ICD), Superintendent (ICD) and Superintendent (CIU) which examined the consignment. The Valuation Committee considered the present condition, make, model and technical specification of the machines. It also considered the contemporary import prices of similar machines. It is seen that the price of similar machine as per the Import Data Base is Rs. 33, 00,680/-. The imported machine can perform the same function as the machine, which has been cleared as per the National Import Data base and has same country of origin and therefore as per the definition of similar goods given in the Valuation Rules, 1988 both the machines are similar and comparable in terms of Rule 8 ibid. It may further be pointed out that the printing machine, which is compared, is having 4 colours whereas, the imported machine as per the invoice is showing as 5 colour. Market investigations were made by Valuation Committee in this regard and it was found that the value of 5 colour machine can be taken as at least 1.2 times of the value of similar 4 colour machine. Since the value of 4 colour machine is 33 lakhs, the value of 5 colour machine would come to 39, 60,000/-accordingly fixed the value of imported

machines as above keeping in mind the value of similar imports down loaded from National Import Data Base as also the value of similar printing machine as seen from the Internet.

(d) Therefore, it appeared to the Department that the importer has mis-declared the value of the goods rendering the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

(e) Further in terms of para 2.17 of EXIM Policy 2002-2007 which deals with import of second hand goods, all second hand goods shall be restricted from imports and may be imported only in accordance with the provisions of this Policy ITC (HS), Handbook (vol.1), Public Notice or a licence/certificate/permission issued in this behalf. The para 2.32 of Handbook of Procedure enlists the second hand goods etc. which may be imported without a licence/certificate/ permission. The list of permissible items as mentioned in para 2.32 of Handbook of procedure does not include printing machines. Therefore, the said machines also appeared to have been imported in contravention of para 2.32 of Handbook of procedure and Para 2.17 of EXIM Policy 2002-2007. & importer appear to have contravened provisions of Section 3(3) OF THE Foreign Trade (D&R) Act, 1992, read with Section 11(1) of the Customs Act, 1962 rendering the goods liable to confiscation under Section 111(d) of the Customs Act, 1962.

e) It further appeared that the Importer had mis-declared the value of the imported goods and contravened the provisions as explained above and thereby these goods appear to be liable for confiscation under provisions of Section 111(m) and Section 111(d) respectively of the customs Act, 1962.

(e) It further appeared that the Importer has mis-declared the value of the imported goods and contravened the provisions as explained above and thereby these goods appears to be liable for confiscation under provisions of Section 111(m) and Section 111(d) respectively of the customs Act, 1962.

(f) Accordingly, the importer was called upon to show cause to the Commissioner of Customs, Nagpur as to why: (A) The assessable Value should not be enhanced to Rs. 42, 10,000/- in respect of Bill of Entry No. 0560 dated 4-3-2004 and

assessed accordingly.

(B) The goods covered vide Bill of Entry mentioned above should not be confiscated under Section 111(d) and 111(m) of the Customs Act 1962.

(C) The penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962.

1.5 In response to this show cause notice M/s. Prabhat Publicity had filed a detailed reply on 5/5/2004 and also submitted a copy of the same at the tune of personal hearing before the Commissioner, Customs & Central Excise, Nagpur on 18/05/2004. They have also filed additional written submission dated 18/5/2004 on 21/5/2004. Having regard to the facts of the case, importer's defense and findings, the Commissioner, customs and Central Excise, Nagpur has passed the following order, On 26-05-2004: (i) Assessable Value of the subject goods i.e. "Printing machine used 1 Royal Zenith p54, 5 colour offset printing machine with all standard electrical and mechanical accessories 28'x40' years of manufacture 1995 and serial No. 368571 and 1 used adast dominat 715, 1 colour offset printing machine with all standard electrical and mechanical accessories 19'x26'- year of manufacture 1995" was enhanced to Rs. 42, 10,000/- in respect of Bill of Entry No. 0560 dated 4-3-2004.

(ii) The goods covered vide Bill of Entry mentioned above were ordered for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962 and an option was given to the importer to redeem the same on payment of redemption fine of Rs. 20 lakhs (Rs. Twenty lakhs only) in lieu of confiscation under Section 125 of Customs Act, 1962.

(iii) A penalty of Rs. 5 lakhs (Rs. Five lakhs only) was also imposed on the importer under Section 112(a) of the Customs Act 1962.

1.6 The Notice filed an appeal against the above said order-in-original No. 2/Cus./2004/Commr. Dated 26-05-2004. The Hon'ble CESTAT, WZB in their order No. A-45/WZB/05/C-III dt. 22-12-2004 has set aside the impugned order of the Commissioner, Customs & Central Excise, Nagpur and directed to decide the

issue afresh by supplying the copy of the Chennai Customs Report as well as the documents on which the department wants relevancy of the Chartered Engineer's certificate.

1.7 In the Revenue proceedings the Commissioner upheld the same valuation & liability to confiscation & penalty, as in the earlier order however reduced the redemption fine to Rs. 15 Lakhs. Hence this appeal.

2.1 The adjudicator has held the Chartered Engineers Certificate to be not reliable in the basis raised in the notice & the reason that 5 colour machine was declared, on BE while subsequently the importers claimed the same to be a 4 colour machine as well as explanation offered on shipment mishaps were not acceptable as they were not proved by evidence. The findings of the adjudicator are not acceptable as it is settled practice of law that unless the genuineness of Chartered Engineer's Certificate is challenged the valuation of second hand machinery is done on the basis of overseas Chartered Engineer's Certificate. The Board's Circular does not stipulate any condition that for applying the depreciation method, manufacture invoice or catalogue is required. The assessment is resorted to on the basis of information furnished in the Chartered Engineer's Certificate. In our case Chartered Engineer's Certificate was in order and containing all the relevant informations such as original price in the year of manufacture, current price and make, model etc. The department could have applied depreciation method to arrive at the correct assessable value. And these findings cannot be accepted.

2.2 The resort to Rule 8 without applying Rule 3 to 6 by the adjudicator cannot be upheld the comparison of NIDB date dt. 16. X .03 is worth the import made on 4.6.04 without the evidence of Chartered Engineers Certificate as to the condition of the goods & country of origin cannot be proceeded with as physical parameters & brand values & usage will result in different prices for used machinery. Identity of comparable goods to the goods under import has to be established as Reliance on Modern overseas 2005 (164) ELT 65 is well placed.

2.3 The transaction value of second hand machinery should be accepted & departed from only for very special reasons. The reasons adopted by Adjudicator for rejecting the transaction value on basis indicated by the assessee after

indicating non-application of the adjudicator mind.

3.1 The question of liability to confiscation arrived under Section 111(d) of Customs Act 1944 on the ground of the imports being of second hand capital goods, due to para 9.12 of Exim Policy 2002-2007 & being restricted under para 2.17 of the Exim Policy & printing machinery is not permissible capital goods as per list under para 2.17 of the Exim Policy are issues which the importer before us is contesting that the order is not speaking & that the Commissioner was to follow the opinion given by Export Promotion Council & also that para 2.33 particular import of second hand capital goods freely & is non specific. The para 2.32 cannot be a ground to upset the Commissioner following. The order is giving detailed reasons, merely because it does not comments on Policy Circular No. 20 (2004-2005) dated 23.02.05 & 1.1.03 & 29.9.03 & notification 31/05 dated 19.10.05 pertaining & import of second hand laptop computer, photocopier etc. as capital goods will not render the order non speaking as urged by the importer these DGFT clarifications are admittedly not for the machine under import. Printing machines are not listed as capital goods is para 2.17 of the Policy is not contested. We find therefore no reasons to consider the import of Capital Goods & to rely on Export Promotion Council Opinions. The confiscation is to be upheld. The quantum of fine as imposed is required to be reduced is a plea which is consider to be adequate at Rs. 10 Lakhs keeping in view the facts of the imports & the demurrage.

3.2 Penalty under Section 112 of the Customs Act 1962 is also reduced to Rs. 1 lakhs.

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