**Garg Diesel'S Vs. C.C.**

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**SooperKanoon Citation** : sooperkanoon.com/43708

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

**Decided On :** Sep-20-2006

**Reported in** : (2006)(113)ECC89

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

**Appellant** : Garg Diesel'S

**Respondent** : C.C.

**Judgement** :
2. The dispute is about the Customs Valuation of a consignment "Sun Control Film" imported by the appellant at Kolkata Port in February 2003, The import price of the consignment was (US $) as under:Description Qty.

Unit Price Amount Roll USD USD SAY TOTAL US DOLLARS SEVEN THOUSAND AND EIGHTY EIGHT AND CENTS FIFTY ONLY.The consignment was assessed provisionally and cleared. Subsequently, under adjudication order, the Assistant Commissioner of Customs ordered that the goods be assessed to duty at a value of Rs. 2.34/sq. ft. The basis for the enhancement of value was that on 17^th March 2003, another consignment had been imported at Chennai at this value. The appellant contested the proposed enhancement on several grounds. The first was that the import was from a manufacturer of the goods and that the prices mentioned in the invoices were commercial prices. The second was that there was no justification for enhancing that price even going by earlier imports inasmuch as, in October 2002, imports had taken place at around this price at

Mumbai and Chennai. These contentions were rejected by the Assistant Commissioner of Customs, noting that the claim of foreign supplier being manufacturer had not been substantiated, and also that the assessment in October at Mumbai and Chennai were incorrect assessment when viewed in the context of March 2003 import at Chennai. We may read the relevant findings.

M/s. Garg Diesel, New Delhi have imported 753 Rote of "Sun Control Film" at a declared pries of US$8.50 per Roll, GIF, which works out to US $ 0. 00879 per sq ft equivalent to Re.0.42253 per sq. ft. A market enquiry was conducted by this office during the initial stage of investigation which revealed that the price of the goods cannot be less than Rs. 2.00 per sq. ft. However, subsequently, this Department has come across evidence of import of similar / identical goods having the same explication / use vide B/E 472236 dated 17-03-2003 by M/s. Rusestar Exim (P) Ltd, Chennai where the declared price is US$50.330 which works out to US$0.0508 per sq. ft. = Rs. 2.43 per sq. ft. Although this evidence relates to imports made after the importation of M/s. Garg Diesel's yet the period of difference between the two imports being a mere one month gives one sufficient reasons to observe that, just within a period of one month, the price of the subject goods cannot fluctuate (in this case rise) to the extent as notified between the two imports.

Accordingly, this gives me sufficient reason to conclude that the declared value of M/s. Garg Diesel is not the correct transaction value in terms of Rule 4 of the Customs Valuation Rules, 1988. The Ld. Advocate during the course of P.H. has submitted that the invoice raised in the case of M/s. Garg Diesel is that of a manufacturer. This fact has not been substantiated with sufficient documentary evidence. Accordingly, I am not inclined to accept that the invoice has been raised by a manufacturer. The Ld. Advocate also submitted that similar / identical goods have been cleared earlier at Mumbai and Chennai during October, 2002 at a price similar to the declared price of the present consignment. This also I am not inclined to accept since the evidence available with the Department showing price of USS 0.0508 per sq. ft. having been imported only at a month's difference is a pointer that the lower import price at Mumbai and Chennai are not the correct price. I am to further state that at that material time the Department was not in possession of evidence of higher value or account of which the Custom House at Mumbai and Chennai had to accent the declarerd price.

An appeal was filed against that order of Assistant Commissioner of Customs before the Commissioner (Appeals). That appeal was rejected.

Hence the present appeal.

3. The contention of the learned Counsel is that the measure under the Customs Valuation Rules for assessment of imported goods is the transaction value and in the present case, there is no material to cast doubt on the commercial nature of the transaction or, that the invoice prices did not reflect the transaction prices. It is also being submitted that the rejection of the appellant's contentions (relating to import being from the manufacturer and earlier imports at the same prices had been accepted) was incorrect. Learned counsel has also pointed out that under a 30^th July 2004 order of the Directorate General of Anti Dumping, the designated authority had found that 'Sun Control Film' was being dumped into India from Taiwan and had proposed imposition of anti-dumping duty. The point made is that these items were being supplied to India at lower prices in general and that the particular import of the appellant was not at a concessional price and that there was no misdeclaration of value.

4. Learned SDR would point out that October 2002 price could not constitute the basis for assessment since those imports were more than three months prior to the import of present consignment and thus there were not contemporaneous imports. He also would contend that March 2003 price, though subsequent to the appellant's import, constitute; a correct reflection of import price inasmuch as it was within the period of three months from the appellant's import.

5. Enhancement of the price is not sustainable. It is well settled that transaction value should constitute the assessable value, except in cases mentioned in Rule 4 of Customs Valuation Rules itself. In the present case, the revenue has not made out a case at all that the transaction price is a concessional price on account of some non-commercial consideration. The appellant has also shown that its price is commercial going by previous imports in October at around the same price.

Transaction is also with a manufacturer.

The anti-dumping order would also support the appellant's contention inasmuch as investigation in that proceeding has shown that exports in general from Taiwan were sent to India at dumped prices. Thus, the commercial nature of the import price remains substantiated. Its rejection for the purpose of assessment is not legally sustainable.

6. In view of what is stated above, the impugned order is set aside and the appeal is allowed with consequential relief, if any, to the appellant.