

Y.S. Enterprises Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-20-2007

Reported in : (2007)(120)ECC102

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

Appellant : Y.S. Enterprises

Respondent : Cc

Judgement :

2. The facts leading to the dispute are that the appellant imported two consignments of "rejected stock lot of Raxine in Rolls" in October and November, 2004. The transaction value mentioned in the invoices was US \$ 30 per kg. However, Customs authorities assessed the consignments to duty after enhancing the value by 25%. Similarly, in October 2004, the appellant imported a consignment 'Mini Walkman. The transaction value according to the invoice was US \$ 0.32 per piece. This consignment was assessed and subjected to customs duty at the enhanced value of US \$ 0.395 per piece.

3. The appeals were filed before the Commissioner (Appeals) challenging the enhancement of value. The Commissioner rejected the appeals with the following observations: In all the appeals, the issue involved is that appellants have imported goods against contract and have filed bills of entry with transacted value. The department loaded the value which was duly accepted by the appellant and duty on the enhanced value was paid without any protest and the delivery for the

good was taken.

In this case, it is observed that the appellant, contrary to their contention in the appeals, did nothing but accepted the enhanced price, paid the duty without any protest, and cleared the goods.

Even after clearance, they did not register any protest with the adjudicating authority against the enhancement of the value. Having once accepted the loaded value of the goods voluntarily and having paid duty accordingly thereon without any protest or objection, they are legally estopped from taking U turn and to deny the correctness of the same. It is also significant to note that there is nothing on record to suggest that the loaded value was accepted by them only for the purpose of clearance of the goods and they reserved their right to challenge the same subsequently. In the circumstances, it is concluded that at the time of finalization of the aforesaid bills of entry, the appellant voluntarily accepted the correctness of the loaded value of the goods, determined possibly in their or their representative's presence and paid the duty thereon voluntarily without any protest. CEGAT in the case of *Vikas Spinners 2001 (128) ELT 143* has held that the appellants having accepted the loaded value of the goods and paid duty without any protest or objection are estopped from denying the correctness of the same subsequently.

In view of the above discussion, the impugned assessments finalized by the department in respect of aforesaid five bills of entry are valid and no interference is called for.

4. The present appeals are directed against the above order. The learned Advocate for the appellant has contended that assessments at enhanced values were clearly illegal in as much as the assessments are required to be done at the transaction value as provided in Rule 4 of the Customs Valuation Rules. It is also being emphasized that in the present cases, enhancement has been made without adducing any reasons for the same, thereby denying the appellant an opportunity to defend the transaction value. The learned Counsel also pointed out that the observation that the appellant had accepted the transaction value is not correct in as much as, payment of duty at the enhanced value was only to obtain clearance

of the goods and not acceptance of value.

5. It is also being pointed out that similar disputes had arisen between the parties earlier also and vide Final order No. 437 to 456/05-NB, this Tribunal set aside the order of the Commissioner and allowed the appeals by ordering assessment based on transaction value.

6. The learned DR would point out that these are cases of self assessment and therefore, enhancement of value was made voluntarily by the importers themselves and therefore, the question of enhancement of value by the assessing officers did not arise.

7. The learned DR has also a legal contention that it is well settled that customs assessable value is a notional value and therefore, actual price paid is not relevant. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of Ispat Industries Ltd. reported in 2006 (202) ELT 561 in support of this contention.

8. We are unable to accept the contention that enhancement of value was voluntary and the assessable value cannot be challenged. We have seen the bill of entry in question and it is seen that loading is specifically mentioned as 'SVB Load (Ass) 24.5% Cust. This clearly shows the enhancement is in terms of a Special Valuation Branch order.

No copy of such instruction is available nor was such instruction considered by the Commissioner (Appeals).

9. It is well settled that the imported goods are required to be assessed at the transaction value unless the transaction value is required to be rejected for the above reasons mentioned in Rule 4 (Eicher Tractors Ltd. v. CCE 2000 (41) RLT 621). We also find that the judgment of the Hon'ble Supreme Court in the case of Ispat Industries Ltd. v. CC Mumbai the facts of the present case in as much as, there is no abnormal feature in the present case so as to warrant assessment based on notional price (Section 14 of the Customs Act).

10. From the factual position already noted, it is clear that there is no valid reason for making enhancement of value in the present cases.

The Raxine consignments were declared as "rejected stock lot". Customs authorities have no case, upon examination of the consignments or otherwise, that consignments are not so. If the consignments are rejects, their price would be below the price of fresh products.

Similarly, the price difference in respect of walkman is so small that no presumption could be made that the transactions value is false. The law specifically warrants assessment at transacted prices. Contrary to this, assessing authorities are trying to make all assessments at a standard price. This discipline (price) is accepted neither by the market, nor by the law. A uniform assessable value is contemplated only in the exceptional cases where tariff values have been prescribed under Section 14(2) of the Customs Act.

11. In view of what is stated above, the appeals are allowed after setting aside the impugned order, with consequential relief, if any, to the appellant.

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