Prasad Enterprises Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-02-2007

Reported in : (2007)(118)ECC119

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

Appellant : Prasad Enterprises

Respondent : Cc

Judgement :
2. The appellant is a regular importer of plastic sheets. It imported two consignments in April 2004. The purchase price was @ 600 $ per metric ton. The appellant sought assessment of the goods to customs duty at this transaction value; but customs authorities rejected the transaction value and assessed the goods at 780 U.S. $ per metric ton.

No reason for rejecting the transaction value or justification for adopting U.S. $ 780 was conveyed to the appellant. The appellant cleared the consignments on payment of duty as assessed and filed appeals before the Commissioner (Appeals). Those appeals were rejected by the Commissioner with the following observations: In both the appeals, the issue involved is that the appellants imported goods against contract and filed Bills of entry with transacted value. department on the basis of the value of the subject goods in international market, loaded the value at par with international value, which was duly accepted by the appellant, and duty on the enhanced value was paid without any protest, and the delivery of the goods was taken.

It is observed that the appellants, contrary to their contention in the appeals, 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 so called arbitrary and unjustified 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 obvious 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 in their or their representative's presence, and paid the duty thereon 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 discussions above, the impugned assessments finalized by the department in respect of aforesaid two Bills of Entry are valid and no interference is called for.

4. The contention of the learned Counsel for the appellant is that payment of duty as assessed is no acceptance of enhancement of value and payment is no ground for rejection of the appeals.

5. It is also being pointed out that imported goods are required to be assessed at their transaction value as provided under Rule 4 of Customs Valuation Rules and rejection of transaction value is permissible only for reasons mentioned in said rule itself as held by the Hon'ble Supreme Court in the case of Eicher Tractors Limited v. CC 2000 (12) ELT 321 (SC). The learned Counsel would also point out that in the appellant's own case, this Tribunal had set aside orders enhancing assessable values arbitrarily [final order No. 1329 to 1326/04 NB - A dated 02/11/04 in appeal

nos. C/566 to 572/04 - NB - A and C/574/04-NB-A].

6. A perusal of the record shows that the enhancement of value has been done without indicating any reason whatsoever. This is contrary to the specific provisions for valuation as well as the judgment of the Hon'ble Supreme Court and this Tribunal Mohan Sales (India) v. C.C., ICD, TKD, New Delhi, reported in 2004 (91) ECC 682 (Tri.). There is also no identifiable basis for the loading of the value. The Commissioner has condoned that action by stating that "the department, on the basis of the value of the subject goods in international market loaded the value at par with international value". No mention of which 'international market', for supply to which country, when. As vague as can be. Section 14 of the Customs Act and Customs Valuation Rules do not permit of valuation in this manner. Criteria are very specific. The impugned assessments, therefore, cannot be sustained. The consignments were required to be assessed based on their transaction value.

7. In the result, the appeals succeed and are allowed with consequential relief, if any, to the appellant.