

Autoline India Ltd. Vs. Cce

Autoline India Ltd. Vs. Cce

SooperKanoon Citation : sooperkanoon.com/45244

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-03-2007

Reported in : (2007)(118)ECC243

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

Appellant : Autoline India Ltd.

Respondent : Cce

Judgement :

2. The duty demand has arisen on account of two disputes - one that the goods sold to the DTA unit of the appellant EOU had been under-valued.

The duty demand on this count is Rs. 72 lakhs. The second is that the private record of the recipient DTA unit showed excess receipts than the clearances shown in the statutory record of the EOU. The duty demand on this count is Rs 14 lakhs.

3. The explanation of the learned Senior Counsel for the appellant on the issue of valuation is that the goods cleared to the DTA unit had been correctly valued in as much as the sale price (assessable value) to the DTA unit was the same as the export price of identical goods. It is also being pointed out that identical/similar goods were being imported into India at around the same price. In this factual situation, the learned Senior Counsel would contend that the finding regarding under-valuation is not sustainable at all. He would also point out that the valuation

practice of the assessee was in conformity with the Circular dated 30.9.1994 of the Central Board of Excise & Customs.

4. On the charge of clandestine clearance, it is being pointed out that accounts tallied in all respect (quantity, value, etc.). The only difference is that sales invoice dates and dates of receipts in the private record did not tally in respect of some consignments. The learned Senior Counsel would contend that since supply and receipts matched in all material particulars, including quantity, valuation, etc. difference in the dates should not be construed against the assessee.

5. The learned SDR would point out that the valuation undertaken by the revenue was in terms of Customs valuation Rules and therefore, the assessable value determined cannot be faulted. In regard to clandestine removal, it is being pointed out that the discrepancies revealed by the private record, remain admitted in the statements.

6. We are not able to find any merit in the finding regarding undervaluation. The goods under sale to the DTA unit are identical to the goods exported. Therefore, they are of the same value. This Tribunal has held in the case of *Tata Coffee Ltd v. CCE Hyderabad* reported in 2004 (168) ELT 460 that FOB value is an acceptable basis for the valuation of goods cleared to a DTA unit by an EOU. However, in regard to clandestine removal, prima facie, the revenue has a case.

7. In view of what is stated above, the appellant is directed to deposit Rs. 7 lakhs within six weeks from today and report compliance on 25th May, 2007. On deposit of this amount, requirement for the deposit of the remaining amounts shall remain waived and recovery stayed till the disposal of the appeals

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com